

751
No. 1883

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE UNITED STATES OF AMERICA (Complainant),
Appellant,

vs.

THE BARBER LUMBER COMPANY (a Corporation),
(Defendant), Appellee.

VOLUME IX.

(Pages 3201 to 3600, Inclusive.)

Upon Appeal from the United States Circuit Court
for the District of Idaho, Central
Division.

FILED

SEP 19 1910

accounts of U. S. Customs
Canal and ~~Revenue~~
~~Revenue~~ 751

No. 1883

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE UNITED STATES OF AMERICA (Complainant),
Appellant,

vs.

THE BARBER LUMBER COMPANY (a Corporation),
(Defendant), Appellee.

VOLUME IX.

(Pages 3201 to 3600, Inclusive.)

Upon Appeal from the United States Circuit Court
for the District of Idaho, Central
Division.

(Testimony of William Balderston.)

Q. Isn't there a decision there in the case of Harvey H. Wells?

A. There is also a decision on review in the Hunter case.

Q. What is the date of that?

A. Those are both May 24. I will have to examine it closely to see just what relation they have to each other. The case here, United States against Harvey H. Wells.

Q. Is that a decision of the Secretary of the Interior?

A. This is a letter from the Commissioner, transmitting a decision of the Secretary of the Interior.

Q. I think the Secretary's decision is there too.

A. That was a decision on review.

Mr. BUNDY.—When was the date of that?

A. May 24.

Mr. KEIGWIN.—We offer these letters of the Secretary of the Interior, in these cases, and we will ask to have them transcribed into the record.

Mr. BUNDY.—Objected to, for the reason that they involve no land mentioned in the complaint, and as utterly immaterial, irrelevant, and incompetent.

Mr. KEIGWIN.—There is no objection to the transcription? Mr. Balderston doesn't want to part with the original record.

Mr. BUNDY.—I want the original records here to look at.

Mr. KEIGWIN.—They are in the land office, and you can see them whenever you want to.

(Testimony of William Balderston.)

C. J. G.

S. V. P.

V. B.

DEPARTMENT OF THE INTERIOR.

33-361.

Washington.

May 24, 1905.

F. L. C.

UNITED STATES

v.

ARTHUR ANDERSON.

The Commissioner of the

General Land Office,

Sir:—

An appeal has been filed by Arthur Anderson from the decision of your office of November 19, 1904, sustaining the decision of the local officers in rejecting his timber and stone application, and the final proof submitted by him, covering the E. 1/2 NW. 1/4 and W. 1/2 NE. 1/4, Sec. 15, T. 7 N., R. 5 E., Boise, Idaho.

Upon careful examination of the entire record no good reason appears for disturbing the action taken by your office and the same is hereby affirmed.

The papers are returned.

Very respectfully,

E. A. HITCHCOCK,

Secretary.

(Testimony of William Balderston.)

L K M.

C. J. G.

S. V. P.

V. B.

DEPARTMENT OF THE INTERIOR.

33-364.

Washington.

May 24, 1905.

F. L. C.

UNITED STATES

v.

JAMES T. BALL.

The Commissioner of the
General Land Office,

Sir:—

An appeal has been filed by James T. Ball from the decision of your office of November 19, 1904, sustaining the decision of the local officers in rejecting his timber and stone application, and the final proof submitted by him, covering the SW. 1/4 of Sec. 13, T. 7 N., R. 5 E., Boise, Idaho.

By stipulation this case was consolidated with those of United States v. Able Edward Hunter and United States v. Harvey H. Wells, the testimony taken therein to be considered in determining the three cases; and it was further stipulated that the testimony taken in the case of Arthur Anderson from the same land district, should also be considered in connection with said three cases.

Upon careful examination of all the matters presented by the combined records no good reason ap-

(Testimony of William Balderston.)

appears for disturbing the action taken by your office and the same is hereby affirmed.

The papers are returned.

Very respectfully,

E. A. HITCHCOCK,

Secretary.

LKM.

C. J. G.

S. V. P.

V. B.

DEPARTMENT OF THE INTERIOR.

33-362.

Washington.

May 24, 1905.

F. L. C.

UNITED STATES

v.

HARVEY H. WELLS.

The Commissioner of the

General Land Office,

Sir:—

An appeal has been filed by Harvey H. Wells from the decision of your office of November 19, 1904, sustaining the decision of the local officers in rejecting his timber and stone application, and the final proof submitted by him, covering the SW. 1/4 of Sec. 14, T. 7 N., R. 5 E., Boise, Idaho.

By stipulation this case was consolidated with those of United States vs. Able Edward Hunter and United States v. James T. Ball, the testimony therein to be considered in determining the three cases; and

(Testimony of William Balderston.)

it was further stipulated that the testimony taken in the case of United States v. Arthur Anderson from the same land district should also be considered in connection with said three cases.

Upon careful examination of all the matters presented by the combined records no good reason appears for disturbing the action taken by your office and the same is hereby affirmed.

The papers are returned.

Very respectfully,

E. A. HITCHCOCK,

Secretary.

LKM.

C. J. G.

S. V. P.

V. B.

DEPARTMENT OF THE INTERIOR.

33-363.

Washington.

May 24, 1905.

F. L. C.

UNITED STATES

v.

On review.

ABLE EDWARD HUNTER.

The Commissioner of the

General Land Office,

Sir:—

An appeal has been filed by Able Edward Hunter from the decision of your office of November 19, 1904, sustaining the decision of the local officers in

(Testimony of William Balderston.)

holding for cancellation his timber and stone entry for the SE. 1/4 of Sec. 14, T. 7 N., R. 5 E., Boise, Idaho.

By stipulation this case was consolidated with those of United States v. James T. Ball and United States v. Harvey H. Wells, the testimony taken therein to be considered in determining the three cases; and it was further stipulated that the testimony taken in the case of United States v. Arthur Anderson from the same land district should also be considered in connection with said three cases.

Upon careful examination of all the matters presented by the combined records no good reason appears for disturbing the action taken by your office and the same is hereby affirmed.

Very respectfully,

E. A. HITCHCOCK,

Secretary.

LKM.

Mr. KEIGWIN.—Q. Mr. Balderston, we wish you to identify another set of papers here. I show you here a file of papers purporting to be papers connected with and affecting a timber and stone entry in the name of Abel E. Hunter, dated September 25, 1901, said entry covering the southeast quarter of section 14, township 7 north, range 5 east, Boise Meridian, in this land district, and consisting of a timber and stone land sworn statement; an affidavit, dated December 10, 1901, purporting to be made and executed by Abel E. Hunter, and attested by Edward N. Garrett, receiver; the cross-examination of

(Testimony of William Balderston.)

claimant in connection with his direct examination on final proof; the testimony of the claimant upon final proof; the receiver's receipt, and the register's certificate, issuing upon the said entry under date of July 29, 1902, and ask you if you can identify those papers as coming from the files of your office.

A. These papers came originally from this office, but are no longer in the files of this office.

Q. They belong to the files of your office?

A. They belong to the files of the General Land Office.

Q. You think they have gone through your office to the files of the General Land Office?

A. I think so, because that is the regular course.

Q. Then you recognize those as constituting an entry originally in this office and by your office transmitted to the Commissioner of the General Land Office?

Mr. BUNDY.—If you want to say that these are files of the General Land Office, put them in. Defendant objects to the reception of any records from the General Land Office, or the local land office, referring to timber and stone entries made by either Arthur Anderson, Harvey H. Wells, James T. Ball, Abel E. Hunter, or Albert P. Nugent, as incompetent, irrelevant, and immaterial, and for the reason that no timber and stone entry made by either or any of these gentlemen are involved in this action.

(Papers marked Plaintiff's Exhibit No. 154A to 154Y, inclusive.)

(Witness excused.)

At this time adjournment was taken until ten o'clock A. M., Thursday, June 3, 1909, at which time, pursuant to adjournment, court met, the Examiner and counsel being present, when a further adjournment was taken until two o'clock of the same day.

Court met at two o'clock, P. M., Thursday, June 3, 1909, pursuant to adjournment, whereupon the following proceedings were had, to wit:

Mr. KEIGWIN.—It is stipulated by and between the parties, in open court, that the time for offering evidence in rebuttal on behalf of the complainant is extended to and inclusive of June 10, 1909.

Mr. BUNDY.—This stipulation is not intended to authorize complainant to offer any evidence not strictly rebuttal.

[Testimony of Charles H. Arbuckle, on Behalf of the Complainant (in Rebuttal).]

CHARLES H. ARBUCKLE, produced by complainant, in rebuttal, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mr. Charles H. Arbuckle?

A. Yes.

Q. And you testified on behalf of the Government in this same case some months ago? A. Yes.

Q. Mr. Arbuckle, do you remember that I asked you about two checks having been given you by Governor Frank Steunenberg, and at that time I only had notations of the checks, and didn't have the

(Testimony of Charles H. Arbuckle.)

checks?

A. I remember that I didn't see the checks then.

Q. I show you a check drawn on the Commercial Bank of Caldwell, Idaho, April 19, 1902, to the order of C. H. Arbuckle, for \$25, signed by Frank Steunenberg, and endorsed C. H. Arbuckle. I ask you if that is your signature on the back of that check as an endorsement. A. I would judge so.

Q. You haven't any doubt in your mind that that is your signature, have you?

A. No, sir; I think that is my signature.

Q. And the stamp mark on it—there is a stamp mark of the Commercial Bank, marked Paid May 6, 1902. That is correct, is it?

A. What do you mean by that?

Q. Marked paid—that stamp is on the check?

A. Yes, I see the stamp.

Mr. GORDON.—We offer that check in evidence. (Marked Plaintiff's Exhibit No. 155A.)

Q. Do you have any recollection of Governor Steunenberg giving you that check?

A. Yes, I have.

Q. I show you check on the same bank, dated May 9, 1902, drawn to C. H. Arbuckle, for \$150, signed Frank Steunenberg, and endorsed C. H. Arbuckle, and ask you if you endorsed that check and received the money in payment of it.

A. That is my signature on that check, but I have no recollection of him giving me that check, or when he gave it to me, or under what conditions; but that is my signature—I haven't any doubt in my mind but

(Testimony of Charles H. Arbuckle.)

that I must have cashed that check.

Q. And you haven't any doubt but what Governor Steunenberg drew the check and gave it to you?

A. No, I don't think there is any question about that; I don't know that he did, but I presume he did.

Q. That is marked Paid May 12, 1902, by the stamp?

A. Yes.

Mr. GORDON.—We offer that check in evidence.

(Marked Plaintiff's Exhibit No. 155B.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Arbuckle you say you remember this first \$25 check?

A. Yes, sir.

Q. What was that given you for?

A. That was given me for money.

Q. A check you cashed for the governor?

A. Yes, sir.

Q. On Governor Steunenberg's stub-book, check stub, there is a notation with reference to this \$150 check which has been shown you, and on that stub it says, "To C. H. Arbuckle for account timber." Now, Mr. Arbuckle, you made an entry yourself, did you not?

A. Yes, sir.

Q. And your wife made one?

A. Yes, sir.

Q. And I believe you testified that those entries were made with your own money. I will ask you as to whether or not this check for \$150 was paid you by Governor Steunenberg on any account of your timber and stone entry?

A. No, sir.

Q. Your final proof was made July 24, 1902, Mr.

(Testimony of Charles H. Arbuckle.)

Arbuckle? A. Yes, sir.

Q. And your wife's was made on the same day, July 24, 1902? A. Yes.

Q. Was that \$150, or any part of it, used by you or your wife in paying for your timber and stone entries? A. No, sir, it was not.

Q. Or was it used in any of the preliminary expenses of making that entry? A. No, sir.

Q. It may have been like the other check you cashed, may it not?

A. I have no recollection of what it is; I don't remember of ever getting that check; I have no recollection of it whatever.

Q. But you do know it wasn't paid you in connection with any timber and stone entry that you made? A. I don't remember of it.

Q. Was it in payment of any timber? Was it given you in payment of any timber and stone entry made by any other person? A. No, sir.

Q. Did you have anything to do with furnishing money for Governor Steunenberg or for anyone else to any other entryman or entry woman?

A. No, sir.

(Witness excused.)

[**Testimony of Edward E. Garrett, on Behalf of the
Complainant (in Rebuttal).**]

EDWARD E. GARRETT, called as a witness for the complainant, in rebuttal, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Garrett, it is my understanding that there has been some testimony to the effect that you gave, as a reason for not issuing final proofs in some of the entries now embraced in this bill, that you could not pass or issue any final receipts as long as your office was under investigation, or until Mr. Sharp, who was the special agent sent here, I was recalled. Will you state whether or not Mr. Sharp's presence here had anything to do with your holding up the final proofs in 1901 and 1902?

A. His presence here had nothing to do with holding up in that regard. He was here and gathered evidence in several cases, the admission of entrymen as to the fraudulent character of their entries, which information he gave the office, the land office, and for that reason we held it up.

Q. Was your office under investigation?

A. No, sir, not at that time, and never was by Mr. Sharp in any way.

Mr. KEIGWIN.—Q. Did Mr. Sharp report to you for instructions? A. He did not.

Q. Were you under his direction in any way?

A. We were not.

(Testimony of Edward E. Garrett.)

Q. Were you entirely at liberty to proceed with the exercise of your official duties, without regard to his presence or his actions?

A. Why, yes; of course we conferred, did confer with him regarding these cases, but we were not bound by his instructions or he by ours; we acted neither under his instructions nor he under ours, rather.

Q. Would the fact that Mr. Sharp was still here and presumably engaged in the discharge of certain official duties of his own be any reason why you should delay the issuing of final certificates?

A. No. If you mean that it has been inferred that we were fearful of issuing receipts because of Mr. Sharp's presence, why I say there is absolutely no foundation for such a statement.

Cross-examination.

(By Mr. BUNDY.)

Q. Nobody has inferred any such thing, Mr. Garrett. You didn't issue final receipts and certificates on the old Basin entries of 1901 until along the beginning of June, 1902, did you?

A. That is correct.

Q. Prior to June, 1902, you had been instructed by the Land Department at Washington to issue final receipts except in cases where you had reason to believe, or something to that substance, that there was something wrong, hadn't you?

A. No, that isn't correct. Between the receipt of the letter of July 13, 1901, and the receipt of the letter of June 8th, I think it was, 1902, we were hold-

(Testimony of Edward E. Garrett.)

ing up all entries under a general order.

Q. Up until when?

A. June, 1902; except that these entries, a number of these Basin entries and some of the others were reported back by special letters, with special instructions to issue in those cases if we were satisfied beyond a question of doubt that they were regular.

Q. That letter you got in April, 1902, didn't you?

A. There were two or three letters to that import in April, 1902.

Q. You didn't issue any of those in either April or May, 1902, because you were not entirely satisfied?

A. That is correct.

Q. Now, at that time, May, 1902, Sharp was here, not investigating your office at all, but he was investigating these Basin entries, wasn't he?

A. Yes.

Q. And he finally made a report, did he not, which you saw?

A. He secured information concerning—

Q. Didn't he make a report?

A. You ask me if I saw that report. He made some reports concerning these entries, yes; I saw some of the data in connection with those reports.

Q. And he reported on five or six claims, I think, didn't he, as bad?

A. I don't remember just what he reported on at that time; I don't know that I know just what he reported on at that time.

Q. Now, Mr. Garrett, in those letters of April,

(Testimony of Edward E. Garrett.)

1902, the Land Department kind of put it up to you after all, as to whether final receipt should issue or not, didn't they?

A. They did in a way—the register and myself.

Q. And you had to be satisfied, I think he said, beyond doubt.

A. Anyway, he put it quite strong; he put the responsibility upon us.

Q. So strongly that you didn't see fit to take the responsibility. A. That is correct.

Q. Now, the fact that the Department had a special agent here investigating Boise Basin entries was enough of itself, was it not, Mr. Garrett, so that you didn't feel like issuing them until you knew what that man had found out?

A. That is not correct, because those letters were received before Mr. Sharp was here, and when there was no agent here.

Q. But he came here in May?

A. He came here in response to a request of mine.

Q. So that while a special agent was here looking these over at your request, you certainly didn't feel authorized in issuing final receipt until he reported?

A. That wasn't my reason; my reason was, refusal to issue under those instructions.

Q. You sent for Sharp to come and investigate these very claims, didn't you?

A. I asked for a special agent.

Q. And he came, pursuant to your request?

A. Yes, I think so.

(Testimony of Edward E. Garrett.)

Q. And during the month of May was he working on these very claims, was he not?

A. He came here in May, and was working on these Basin claims.

Q. Do you mean to say that the fact that those claims were being investigated at your request had nothing whatever to do with your refusal to issue final receipts?

A. After he had come and substantiated in part my suspicions, of course I was not more likely to pass them then than before.

Q. Now, you did in fact, after he left, issue final receipts and final certificates on every one of those claims except the five or six that he reported adversely, didn't you?

A. I don't remember how many we didn't issue on; there was more than that, I think.

Q. Of the Basin entries?

A. Yes; there must have been a dozen of them.

Q. Outside of the dozen, then, you issued final certificates on all the rest? A. Yes, I think so.

Q. And you did that after Sharp had finished his work and gone back?

A. No, he hadn't finished his work then.

Q. When did he leave here?

A. He didn't leave here until in the fall of 1904.

Q. He left here in the summer of 1902.

A. He may have made a temporary trip away from here, but his headquarters were here from May, 1902, until in the fall of 1904.

Q. Was there any other agent here in the sum-

(Testimony of Edward E. Garrett.)

mer of 1902?

A. I don't think there was; there may have been an agent in and out.

Q. Did you consult with Mr. Sharp before you issued final certificates?

A. I think in nearly every one we did, yes.

Q. So that the final certificates which you finally issued upon the Basin entries were issued by you after consultation with the special agent who had been sent out here for the special purpose of investigating them?

A. They weren't issued on his say-so.

Q. I will ask you again: Every single certificate which you issued in the Basin entries was so issued by you, after consultation with Mr. Sharp, who, at your request, had been sent here to investigate those identical entries, isn't that true?

A. Every certificate issued for those entries was, after he had been here, and we had consulted with him concerning them.

Q. And after he had investigated?

A. He was here investigating it then, at that time, but I don't mean to say that he had investigated all of them; he had only investigated a very small part of them, and we had, in the meantime, received instructions to issue final certificate except where we had something definite upon which to base a suspension.

Q. That letter you got in June, didn't you?

A. June, 1902.

Q. Mr. Sharp was here at that time?

(Testimony of Edward E. Garrett.)

A. I think he was.

Q. Investigating these titles? A. Yes.

Q. Mr. Garrett, did you ever issue final certificate or final receipt on any entries in the Basin or elsewhere where the special agent told you there was anything wrong with them?

A. No, I think not.

Q. Did Mr. Sharp ever report adversely on any claim except the report he made when he first came here in May or June, in the Basin?

A. I doubt if he made any formal reports much after that first summer; I don't know that he ever made any formal reports against Basin entries after the summer of 1902.

Mr. BUNDY.—Now, Mr. Reporter, when Mr. L. L. Sharp was on the stand, he testified to having made a report to the Department, at Washington, or to the local land office, or both, relative to Basin entries. I then served notice that we wanted that report produced, and I now renew the notice to the attorneys for the complainant, that we want the report of L. L. Sharp, made to the Department, relative to the entries involved in this litigation, so far as that report refers to them, and unless it is produced at the argument, we will move to strike out all the evidence of Mr. Sharp, and all the evidence of Mr. Garrett relating to that report.

The WITNESS.—I might say, Mr. Bundy, when you asked me as to making a report subsequently, he may have made a general report; if he made a report as to any particular entry, I would have knowl-

(Testimony of Edward E. Garrett.)

edge of it.

Q. You began, along in July, August, and September, issuing those final certificates?

A. Yes.

Q. And the final certificates were on final proofs submitted months before? A. Yes.

Q. Will you tell why it was that you didn't issue them all at one time?

A. Because I called the entrymen in and required a non-alienation affidavit of them, and as they came in we issued on them.

Q. And you required from each entryman an affidavit that he hadn't sold or alienated his property subsequent to filing? A. Yes.

Q. And you did that on the theory that if he had made such a sale or incumbrance, his entry was void, under the law, and you didn't issue it at all?

A. In a way, yes; that isn't exactly as I would put it.

Q. Is that the only way you can account for the fact that these final certificates were strung along all summer?

A. That is the explanation of it—I don't remember now; it may have been that we didn't call them all in at once because we didn't want to rush them through.

Q. Mr. Garrett, while you were holding those up, you were corresponding with a mill concern up in the Basin, trying to get them to buy those claims, weren't you? A. I was not, or any other time.

Q. Didn't you write to that mill concern and tell

(Testimony of Edward E. Garrett.)

them you couldn't hold them up much longer, that they must get busy and buy it?

A. I never wrote any such letter.

Q. I wish I had the letter.

A. Do you mean to say that I did, Mr. Bundy?
I say it is absolutely untrue.

Q. I am informed that you did.

A. I say that I did not.

Q. I am informed that all of this time you were interested in a mill that was trying to buy them.

A. I don't know what your information is, but it is absolutely untrue. I don't propose to let an inference of that kind pass without denying it.

Q. I wouldn't, if I were you; I would deny it with all the emphasis I could.

A. I know I was in no wise interested in those entries; the only interest I had, or ever had, in those entries was to perform my duty when I was in office, and since that time I have no interest in them, except to see justice done so far as it comes my way.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Garrett, did you know of Mr. Sharp's visit to Spokane to see Senator Foster and Mr. Campbell?

A. I knew at the time he went; I didn't know at that time what it was for; I subsequently knew.

Q. Do you know whether or not his attitude towards these claims was any different after he returned from that visit from what it was before he made the visit?

(Testimony of Edward E. Garrett.)

Mr. BUNDY.—I object to that as incompetent, irrelevant, and immaterial, unless he bases his evidence upon something he did rather than his attitude about it.

A. Yes, his attitude did change, because after that he hesitated about pushing the cases after that.

Recross-examination.

(By Mr. BUNDY.)

Q. You didn't hesitate, did you?

A. I don't think I did.

Q. He has got his job yet and you have lost yours.

A. I don't attribute the loss of my job to that, altogether.

Q. You issued the final receipts yourself?

A. I issued what was issued.

Q. And when you issued one it was, in effect, your approval?

A. It was acting under the instructions that I had—no definite information that there was anything fraudulent about it.

Q. Did you ever ask Mr. Sharp to go and investigate any particular one?

A. I wouldn't say that I did that.

Q. Do you mean to say that Mr. Sharp, after his visit to Senator Foster, was bribed so that he didn't do his duty after that?

A. I wouldn't say that.

Q. Do you mean that?

A. I mean just this: That he was afraid after that, apparently, to push his investigation into these entries.

(Testimony of Edward E. Garrett.)

Q. What investigation was he afraid to push?

A. Of these fraudulent entries in the Basin.

Q. What entries did you ask him to investigate that he was afraid to push?

A. He was investigating all entries at that time; I don't know what particular ones.

Q. Do you know of any entry that you requested him to investigate that he was afraid to investigate?

A. I don't know that I ever asked him to investigate any particular entries.

Q. Tell of any bunch of entries that you asked him to investigate that he was afraid to investigate.

A. These Basin entries.

Q. Did he tell you that he was afraid to investigate them?

A. Not in those words; he said he was between the devil and the deep sea—his senator on one side, and he didn't know whether the Commissioner would uphold him on the other.

Q. Who was you—the devil or the deep sea?

A. Neither.

Q. So the real purpose of your evidence to-day, Mr. Garrett, is to brand Senator Foster and Mr. Sharp and Mr. Campbell with having received and given bribes?

A. I have no purpose in giving the testimony; I am called here, and I give the facts as I understand them.

Q. Is that the inference that you have of the transactions, and is that what you want to convey?

A. I am making no charges against anyone.

(Testimony of Edward E. Garrett.)

Q. No, a man of your stamp don't usually make charges; he usually insinuates. Do you mean to insinuate that Senator Foster and Mr. Campbell gave, and Mr. Sharp accepted, a bribe?

A. I understand that there is evidence in the record as to what Mr. Sharp received and what Mr. Campbell gave and what Senator Foster did in the matter; you know that as well as I; you can draw your own conclusions, and I presume the Court can.

Q. I want to find out now whether you are charging, as an official of the land office, whether it is your intention to charge that you, at that time, believed that Mr. Sharp was bribed or in some way induced to violate his duty in investigating these claims.

A. I believed at that time, and I believe now, that Mr. Sharp was intimidated in a way from doing his duty.

Q. And notwithstanding that, you proceeded to issue final certificates and receipts, without making that charge to the Department.

A. At that time I think practically all final receipts and certificates had been issued in these cases.

Q. What was Mr. Sharp intimidated to do then?

A. About a dozen were held up, and, as I understand, are still held up.

Q. Do you know when that was?

A. I think that was along in November or December, somewhere in the early fall or winter of 1902.

Q. And all the entries had been closed up and

(Testimony of Edward E. Garrett.)

final receipts issued then except the ten or twelve that were held up?

A. The original Basin entries, yes.

Q. There were a good many more than ten or twelve original Basin entries.

A. At that time practically all the original Basin entries had been passed except these ten or twelve; there were subsequently a number of entries in the Basin country.

Q. Did you ever report to the Department that in your opinion Mr. Sharp had been intimidated and was not doing his duty? A. I never did.

Q. Was it your duty to report that?

A. I think not.

Q. If you saw a special agent here whom you believed had been bribed or intimidated, who was not doing his duty, it was your duty to go on and issue the certificates just the same, was it?

A. I issued no certificates where I had any definite information, and his duty here was to get information; if he didn't get it, and didn't give it to me, I didn't have it.

Q. You consulted with him from time to time?

A. Yes.

Q. That was what he was out here for, to aid you in determining the good faith of these entries?

A. No, not directly; he was independently, and made his reports confidentially to the Commissioner, as a rule.

Q. He didn't report to you at all?

A. No, he didn't report to me.

(Testimony of Edward E. Garrett.)

Q. The Commissioner didn't tell you that Mr. Sharp had reported adversely on any of these claims on which you issued certificates?

A. Not until he issued the notice for hearings in the Anderson et al. cases.

Q. That is, five or six cases? A. Yes.

Q. He didn't tell you about any others?

A. I don't remember.

Q. You never heard about any others from anyone?

A. There may have been some letter concerning those other entries.

Q. Was there? A. I don't remember.

Q. Did you believe, during the summer of 1902 or 1903, that Mr. Sharp had been intimidated or bribed?

A. I say this was in the fall, late in the fall or early winter, of 1902, that he had this conference with Senator Foster and Mr. Campbell, and it was some time after that that I gathered that information.

Q. You then gathered the information that he had been bribed? A. I didn't say so.

Q. Or intimidated?

A. After he had been called to a conference with Senator Foster and seen Mr. Campbell, I gathered that information from what he told me concerning it.

(Witness excused.)

[Proceedings Re Non-alienation Affidavits, etc.]

Mr. KEIGWIN.—Let the record show that counsel for the complainant here produce in court and

tender to Mr. Bundy the non-alienation affidavits heretofore called for by him in connection with the examination of Mr. Garrett.

Mr. BUNDY.—Let it further appear that counsel for the defendant wants to examine Mr. Garrett with reference to the few non-alienation affidavits submitted here, being nine in number, whereas he has testified that none of the Basin entries were approved until this affidavit was taken. I want him recalled for the purpose of examining him. Here you have got nine out of a hundred.

Mr. KEIGWIN.—Let the record show that the non-alienation affidavits now tendered to counsel for the defendant are all that are in the possession of counsel for the complainant, or that can be found, as counsel are informed, upon a search of the files of the land office at this place.

Mr. BUNDY.—The non-alienation affidavits tendered purport to be signed and made by the following entrymen: John R. Gary, Lelia Lee, Louisa B. West, Lewis Nibler, Dean West, Gustave A. Link, Sarah Greig, Samuel Greig, and William W. Abrams, each one of the affidavits being identical with that of John R. Gary, which reads as follows:

State of Idaho,
County of Ada,—ss.

John R. Gary being first duly sworn on his oath deposes and says that he is the identical person who made timber filing, under Act of June 3, 1878, for the southeast quarter of section twenty-five, in township eight north, range five east, final proof for which was offered before the register and receiver of

the local land office at Boise, Idaho, on March 7, 1902.

Affiant further swears that he made said filing on said tract of land in good faith and has not sold, assigned, or in any manner alienated or agreed to alienate said tract of land above described, and has not sold, assigned or in any manner alienated or agreed to alienate the timber thereon since the date of said final proof, or at all. Affiant further swears that his postoffice address is Boise, Ada County, Idaho. And further affiant saith not.

Mr. KEIGWIN.—Do you put that in evidence?

Mr. BUNDY.—No, I have read in the one; and I demand that you produce the rest of the non-alienation affidavits taken by Mr. Garrett, he having testified that in every instance a non-alienation affidavit was taken from the entrymen before final receipt was issued.

Mr. KEIGWIN.—We offer in evidence the non-alienation affidavits which have been examined and enumerated by Mr. Bundy, and one of which has been read by him, and ask that the same be marked, collectively, Plaintiff's Exhibit No. 157A.

(Marked Plaintiff's Exhibit No. 157A.)

Mr. BUNDY.—Counsel for the defendant now moves that all of the evidence of the entrymen making non-alienation affidavits be stricken out, for the reason that such affidavits were not produced for cross-examination, or else defendant wants each of such entrymen produced for further cross-examination with reference to such affidavits.

Mr. KEIGWIN.—We also offer in evidence pat-

ents issued under the timber and stone land act upon entries made by the following named persons:

- John A. Youngkin, dated May 13, 1904.
- Benjamin R. Allen, dated September 9, 1904.
- Caroline Alexander, dated June 10, 1904.
- Williams W. Abrams, dated May 24, 1904.
- Elof Anderson, dated May 13, 1904.
- Emma M. Anderson, dated May 13, 1904.
- Jackson Ownbey, dated May 13, 1904.
- Mary E. Ownbey, dated May 13, 1904.
- Henry Bayhouse, dated May 24, 1904.
- John J. Blake, dated April 14, 1906.
- Alfred Bayouse, dated May 24, 1904.
- Frank Bayhouse, dated June 10, 1904.
- George Bayhouse, dated June 10, 1904.
- Lewis K. Burns, dated January 28, 1904.
- Edward Brisbin, dated March 17, 1904.
- James O. Baker, dated February 1, 1904.
- Charles W. Ballantine, dated July 26, 1904.
- Clifton C. Bliven, dated June 10, 1904.
- Emma Bilderback, dated May 24, 1904.
- Ida Twogood, dated June 30, 1905.
- George T. Ellis, dated July 2, 1904.
- Helen E. Eagleson, dated June 10, 1904.
- William H. Gibberd, dated May 13, 1904.
- Addie G. Gibberd, dated April 8, 1904.
- Mack Gillum, dated February 1, 1904.
- Samuel Greig, dated January 28, 1904.
- Sarah Greig, dated January 28, 1904.
- Rice J. Harbaugh, dated December 29, 1904.
- Joseph M. Hollister, dated February 1, 1904.
- Leonora Hollister, dated February 1, 1904.

Walter H. Harrison, dated February 1, 1904.
Caro F. B. Kingsley, dated May 13, 1904.
Charles S. Kingsley, dated May 13, 1904.
Mary Link, dated February 1, 1904.
Gustave A. Link, dated February 1, 1904.
Lelia Lee, dated February 1, 1904.
Willis C. Lane, dated January 28, 1904.
John G. McDonald, dated March 18, 1905.
Maud Pitman Neil, dated May 13, 1904.
John M. Neil, dated May 13, 1904.
Jacob V. Nusbaum, dated May 24, 1904.
Pearl I. Nusbaum, dated June 10, 1904.
Lewis Nibler, dated February 1, 1904.
Charley Patterson, dated January 28, 1904.
Edward J. Phelps, dated November 3, 1905.
Margaret Pearson, dated January 28, 1904.
William Pearson, dated January 28, 1904.
Benjamin E. Stahl, dated June 10, 1904.
Ariedta H. Stahl, dated June 10, 1904.
Edward H. Starn, dated May 13, 1904.
Mary Starn, dated May 13, 1904.
Emerson E. Sensenig, dated July 2, 1904.
Elizabeth Schmelzel, dated June 10, 1904.
Lucretia C. Sensenig, dated June 10, 1904.
Nellie J. Thompson, dated December 30, 1905.
Frederic Thurman, dated January 28, 1904.
Wilbert F. Wilmot, dated January 28, 1904.
Harry S. Worthman, dated January 28, 1904.
Dean West, dated January 28, 1904.
Louisa B. West, dated January 28, 1904.
Susie A. Youngkin, dated June 10, 1904.

[**Testimony of Max P. Taylor, on Behalf of the
Complainant (in Rebuttal).**]

MAX P. TAYLOR, sworn as a witness for complainant, in rebuttal, testified as follows:

Direct Examination.

(By Mr. KEIGWIN.)

Q. Mr. Taylor, what is your occupation?

A. City editor of the "Statesman."

Q. How long have you been connected with the "Statesman" in that capacity?

A. Why, about six weeks.

Q. What was your occupation in the months of February and March last?

A. I was on the staff of the "Statesman."

Q. In what capacity? A. Reporter.

Q. City reporter? A. Yes, sir.

Q. What was the scope of your duties as such city reporter?

A. Well, that is a pretty broad question, but generally I reported the federal building and the state-house and the county building.

Q. You collected news and reported it to the newspaper for publication? A. I did.

Q. How often is the "Statesman" published?

A. Every day.

Q. In the morning? A. Yes, sir.

Q. It is the only morning paper in the city of Boise? A. It is.

Q. Do you know what its circulation is in the city of Boise?

(Testimony of Max P. Taylor.)

A. I couldn't say; I couldn't answer that question.

Q. Approximately.

A. In the city of Boise or all together?

Q. In the city of Boise.

A. The local circulation I couldn't estimate; I think the circulation is about eight thousand.

Q. That includes the circulation in the city and elsewhere? A. Yes, sir.

Q. How much of that is in the city of Boise?

A. I do not know.

Q. As much as five thousand?

A. I think not.

Q. Four thousand?

A. I think that is a pretty fair estimate.

Q. More than three thousand?

A. That is only an estimate on my part; it is only guesswork—I am not in the circulation department.

Q. Is the "Statesman" owned by an individual, or a firm, or a corporation?

A. The Statesman Printing Company.

Q. A corporation? A. Yes, sir.

Q. Who is the managing editor of the "Statesman"? A. Guy Flenner.

Q. He is the leading editor, is he?

A. Yes, sir.

Q. Is Mr. Calvin Cobb connected with the "Statesman"?

A. He is the president of the company.

Q. And he has control of the policy of the paper, I suppose?

(Testimony of Max P. Taylor.)

A. Well, to that I couldn't say; it is to be presumed that he does.

Q. I suppose that you have no objection to admitting that the "Statesman" is the best paper in the State.

A. I have not.

Q. And the leading paper in the State.

A. I have not.

Q. And the most widely read paper in the State?

A. I have not.

Q. That is your real opinion, is it?

A. It is.

Q. In the course of your duties as city reporter last February and March, did you pay any attention to the trial of the case in which you are now testifying?

A. I did, sir, from time to time.

Q. Did you write any reports of the progress of that case?

A. I did, sir.

Q. I show you here a paper which purports to be a copy of the "Idaho Daily Statesman" of February 4, 1909. I suppose there is no doubt that that is a copy of the issue of that day, is there?

A. None whatever, in my mind.

Q. And I show you, on the eighth page, an article headed, "Slow Grind in the Timber Cases." Did you write that article (Marked Plaintiff's Exhibit No. 159A)?

A. My recollection is that I did.

Q. I show you another copy of the "Idaho Daily Statesman," which purports to be a copy of the issue of February 14th, and I show you an article on the fifth page there, headed, "Timber Hearing Looks Like a Farce." Did you write that article?

(Testimony of Max P. Taylor.)

A. My recollection is that I did, excepting the headlines.

Q. Do you know who put the headlines there?

A. The city editor at the time, I presume; I presume either Mr. Flenner or Mr. Dixon.

Mr. KEIGWIN.—We offer this newspaper in evidence, and ask that the article shown to the witness, on the fifth page, headed, "Timber Hearing Looks Like a Farce," be transcribed into the record.

(Newspaper marked Plaintiff's Exhibit No. 159B.)

Mr. BUNDY.—Objected to, because this is not a comic opera performance, but a lawsuit, and it is immaterial for the purposes of any issue involved in this case.

Plaintiff's Exhibit No. 159B.

"TIMBER HEARING LOOKS LIKE A FARCE.
Prominent Citizens of Boise Indignantly Refute
Grave Charges.

Accused of Conspiring With Lumber Company.

Men and Women of Means and Character Charged
with Having Been made Stool Pigeons by Barber
Corporation—Tedious, Expensive and Profitless
Procedure.

Since February 3 the slow, tedious process of taking evidence in the Barber-Moon timber case has been going on in the Federal Building before Judge Morgan as special examiner. The government charges that all the people of this city and vicinity who exercised their right as citizens to enter lands under the timber and stone act did so as tools of the

Barber Lumber Company and willingly perjured themselves before the land office, at the request of the lumber Company.

It's a Serious Charge.

This is a serious charge to be made against the 235 prominent citizens mentioned in the government's complaint and it is not surprising that these entrymen and entrywomen indignantly deny the government's charge and assert from the witness stand that so far as they are concerned the charge is absolutely false.

So far 53 entrymen, including such well known people as Henry and George Bayhouse, Mr. and Mrs. Sensenig, Mr. and Mrs. Youngkin, Mrs. Caroline Alexander, Mr. and Mrs. Kingsley, Mr. and Mrs. Pearson, John F. McDonald, R. P. Phelps, Charles Patterson, W. L. Harrison, Mr. and Mrs. Starn, Harry K. Eagleson, and many others, have been called to testify on the part of the government and everyone has testified that the charge of the government is not true.

Would Overflow Prison.

It is perhaps not generally known that the officers of the government have charged everyone of these people with criminal conduct which, if true, would depopulate Boise and populate the penitentiary to the extent of 250.

On Friday, H. K. Eagleson, while on the witness stand under an agreement to turn it over to the Barstand, stated that he knew personally 100 of the 230 entrymen who are charged with having entered

ber Lumber company, and then swore falsely before the land office to get the title, and stated further that everyone of the 100 were people of unimpeachable character.

It will be interesting to follow this case and find out what induced the government officials to make such sweeping and serious charges against so many of our citizens."

Mr. KEIGWIN.—Q. I show you, Mr. Taylor, another copy of the same newspaper, dated February 16, 1909. That is a copy of the issue of that day, is it not? A. It is, sir.

Q. And I show you an article on the second page, headed, "Witness Promised Immunity. Sensation Results From Testimony of E. A. Wilmott in Timber Case." Did you write that article about Mr. Wilmot? A. I did, sir.

Mr. KEIGWIN.—I offer that copy in evidence, and ask that that article be transcribed into the record.

(Newspaper Marked Plaintiff's Exhibit No. 159C.)

Plaintiff's Exhibit No. 159C.

"WITNESS PROMISED IMMUNITY.

Sensation Results from Testimony of E. A. Wilmott
in Timber Case.

Testified, He Says, as Ruick Desired Because of
Declaration of Government Prosecutor—Entry-
men Are Uniformly Denying Allegations.

E. A. Wilmott, the last witness in the case of the United States vs. Barber, Moon, and others, the civil suit involving Boise basin timber lands, created

something of a sensation when he testified that Former District Attorney Ruick has promised him immunity if he would testify as he desired.

On direct examination his testimony was more favorable to the government's case than that of any witness so far examined, but upon cross-examination his statements explained away his former answers and it was then he declared that he had previously testified under a promise of immunity.

The witnesses called and examined since Saturday morning are Fronk P. Weasel, E. A. Wilmott, Alfred Bayhouse, Mrs. H. K. Eagleson, Mr. and Mrs. Charles Arbuckle, Mr. and Mrs. Gustave Linck, Henry Bayhouse, Mr. and Mrs. Jack Ownsby, Mrs. Hugo Bayhouse, Mrs. Sonora Joplin and Walter Joplin.

These are all entrymen called by the government to prove the allegations made in the complaint to the effect that they had each committed perjury before the local land office in the interest of the Barber Lumber company. They all testified that the government's charge was unqualifiedly false so far as they were concerned."

Mr. KEIGWIN.—And I show you another copy of the same paper, dated February 21, 1909; do you recognize this as being a copy of the issue of February 21, 1909?

A. The sum and substance of these articles are by myself, but, of course, in editing, the city editor makes changes which are generally material to the copies which go through his hands.

Q. And the city editor writes the headlines?

A. He is the last man who handles the copy; generally the city editor writes the headlines.

Q. Do you recognize that as being a copy of the issue of the day of which it bears date?

A. Yes, sir.

Mr. KEIGWIN.—We offer this issue of February 21, 1909, in evidence, and ask that the article on the second page thereof, headed, "Prosecution is in Vain," be transcribed into the record.

(Newspaper marked Plaintiff's Exhibit No. 159D.)

Plaintiff's Exhibit No. 159D.

PROSECUTION IS IN VAIN.

Attempt of Federal Authorities to Prove Perjury
Fails.

Case Against the Barber Lumber Company is Un-
productive, Although Many Witnesses Are
Called.

During the past three days in the case of the United States vs. Barber, Moon and others, the government has been placing prominent men and women on the witness stand in a vain attempt to find some one who entered timber land as a hireling and servant of the Barber Lumber company, and has failed to discover a single one out of the 90 so far sworn.

Among the witnesses were Andrew Hansen, Mr. and Mrs. Edward E. Butler, Mrs. Jennie Thompson, Norman H. Young, J. R. Garry, Mr. and Mr. C. H. Eagleson, Mrs. T. L. Martin, Samuel Vance, Mr. and Mrs. George W. Butler, Dr. E. A. Lockhart, A. F. Joplin, Mrs. Monroe and J. W. Hart.

Charged with Perjury.

All of these people and many more are charged by the government in this civil action with having perjured themselves at the request of and for the Barber Lumber company. The evidence so far has been directed to the good faith of the entrymen and every one testified emphatically that he entered the lands for his own benefit and never had any agreement expressed or implied by which he was to sell the land to any particular person or company after proving up.

Injustice Seems Apparent.

If this serious charge has been made against 250 citizens of this community without anything to support it, as now seems apparent, a great injustice has been done to them and to the lumber company and the business interests of this community as well.

When Hart, clerk of the supreme court, had his attention called to the charge in the government's complaint and asked if it was the truth, he answered prompt and emphatically: 'It is an unmitigated falsehood.' Each of the other 90 witnesses have said the same thing in similar words."

Mr. KEIGWIN.—And we have here, Mr. Taylor, another copy, dated February 25, 1909, and ask you if you can identify that as being a copy of the issue of that day.

A. I should say that that is a copy of the issue of that day.

Q. And I show you an article on the eighth page of that issue, headed, "Federal Timber Suit. More

than 100 Entry-men Deny Allegations," and ask you if you recognize that as your composition, in substance. A. I do, sir.

Mr. KEIGWIN.—We offer that also in evidence, and we desire the article on the eighth page, headed as I have indicated, to be transcribed into the record.

(Newspaper marked Plaintiffs' Exhibit No. 159E.)

Plaintiff's Exhibit No. 159E.

"FEDERAL TIMBER SUIT.

**More Than 100 Entry-men Deny Allegations.
Testify That Wholesale Charges of Perjury and
Fraud Are False—Trend of Testimony.**

In the case of the United States vs. Barber Lumber company the taking of evidence is progressing slowly before Special Examiner Morgan. The government is still trying to find some one who entered or filed a timber and stone claim at the request of the defendants and so far has wholly failed. As 105 entry-men have now testified, and in every case have said that the government's complaint is unqualifiedly false so far as their entry is concerned, it begins to look as though the wholesale charges of perjury made against the citizens of Boise and vicinity have absolutely nothing to sustain them.

Witnesses Examined.

Among those charged with conspiring with the Lumber company to defraud the government by means of fake entries and false swearing, and who have indignantly denied the charges during the sessions of the past few days, we notice Dr. Lockhart

of Wallace, Mrs. Butter of Moscow, W. S. Walker, Mrs. C. B. Ewing, Miss Evlyn O'Farrel, Miss Gardner, Frank R. McDonald, B. T. Parker, Chief of the Fire Department, Merrit S. Towgood and Mrs. Two-good, J. K. Woodburn, W. B. Davidson, L. T. Kintert, and R. J. Hasbaugh.

Trend of Testimony.

A fair illustration of the proceedings before Judge Morgan was the examination of Miss Evlyn O'Farrel. She testified that she made an entry in November, 1901; proved up in June, 1902; held her land until patent was issued in 1904; paid taxes on it that year, and then sold in the open market in 1905. She was then subjected to a long cross-examination by the government in an attempt to show she was acting for the defendants in making her entry and that it was fraudulent.

The other witnesses testified to substantially the same thing, except most of them sold after final receipt was issued without waiting for patent.

To conduct the case the government has two Washington attorneys and four special agents in attendance besides the swarm of witnesses, a daily expense that is enormous."

Mr. KEIGWIN.—Q. Mr. Taylor, were you present during all the sessions of the testimony that were had in this case? A. No, sir, I was not.

Q. How did you get your information about the character of this testimony?

A. I talked to Mr. Bundy from time to time; I talked to Mr. Gordon from time to time; and I talked

(Testimony of Max P. Taylor.)

to yourself from time to time.

Q. In this first article, in the issue of February 14, 1909, did Mr. Gordon or I tell you this: "It is perhaps not generally known that the officers of the government have charged every one of these people with criminal conduct which, if true, would depopulate Boise and populate the penitentiary to the extent of 250"?

A. I don't believe he did.

Q. Aren't you sure you didn't get that from Mr. Gordon or me? A. I am, sir.

Q. Now, in this issue of February 16, 1909, in regard to the testimony of E. A. Wilmot, were you present during Mr. Wilmot's testimony?

A. I was, part of the time.

Q. And you wrote that from your own understanding of the testimony?

A. Yes, I should say so.

Q. Did you understand from the testimony of Mr. Wilmot, as you heard it, that he was testifying in this case under a promise of immunity from prosecution?

A. I couldn't say that I wholly got that information from listening to his testimony, no; but I inquired about it later on.

Q. Not from Mr. Gordon or me, did you?

A. Well, I believe I talked to Mr. Gordon on that evening; whether I talked to him about that particular matter or not, I wouldn't be positive.

Q. Did Mr. Gordon tell you that Wilmot had testified that he was testifying in this case on ac-

(Testimony of Max P. Taylor.)

count of some previous promise of immunity?

A. He did not. If I recollect now, I heard the controversy between yourself and counsel for the defense, just during Mr. Wilmot's cross-examination.

Q. Yes, I remember you were present that day.

A. Yes, sir.

Cross-examination.

(By Mr. BUNDY.)

Q. You see the San Francisco papers occasionally, don't you, Mr. Taylor? A. Yes, sir.

Q. Do you remember, a short time after Mr. Gordon and Mr. Keigwin and I left here, of seeing a large picture in the "San Francisco Examiner" of my friend Gordon on one side, and Mr. Keigwin on the other, and a man by the name of Bennett, who was the special Examiner, in the middle, and a big write-up of the enormous frauds in the state of Idaho, in which Mr. Gordon and Mr. Keigwin were assisting in the prosecution on behalf of the country?

A. I do not.

Mr. KEIGWIN.—And in which Mr. Bundy appeared for the defense?

Mr. BUNDY.—But not in the picture.

(Witness excused.)

At this time an adjournment was taken until ten o'clock A. M., Thursday, June 10, 1909.

Court met on Thursday, June 10, 1909, at ten o'clock A. M., pursuant to adjournment, the Examiner and counsel for the respective parties being present, when the following proceedings were had, to wit:

[Testimony of Edward E. Garrett, on Behalf of the Complainant (Recalled—Further Cross-examination).]

EDWARD E. GARRETT, recalled for further cross-examination, testified as follows:

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Garrett, when you were on the stand the other day there were nine non-alienation affidavits offered in evidence, and I think identified by you, being signed by John R. Gary, Lelia Lee, Louisa B. West, Lewis Nibler, Dean West, Gustave A. Link, Sarah Greig, Samuel Greig and William W. Abrams, which non-alienation affidavits I now show you. Is that all of the non-alienation affidavits you took before issuing final receipts? A. No..

Q. Did you take non-alienation affidavits in all of the entries made during the years 1901, 1902, and 1903 and 1904, before issuing final receipts?

A. Wherever there was a delay between the date of final proof and the issuance of final receipt, I did, yes.

Q. Then wherever a final proof, when it was offered and the money was paid in, was held up for approval, then before you issued final receipt you

(Testimony of Edward E. Garrett.)

took a non-alienation affidavit? A. Yes.

Q. Now, so far as is disclosed by the evidence here, practically all of the filings which were made in 1901 up in the Basin, and possibly some that were made in January, 1902, were of the class you speak of, that is, they were held up for a time?

A. All timber and stone proofs prior to June, 1902, and after July, 1901.

Mr. FRASER.—From July, 1901, then, to June, 1902, that would be?

A. Yes, all proofs offered during that time were held up.

Mr. BUNDY.—So that as to all those entries these non-alienation affidavits were taken?

A. Yes; that applied to other proofs than in the Basin though.

Q. All involved here? A. Yes.

Q. Up to that time no timber and stone entries had been made up in the townships in the Crooked River? A. No.

Q. And no entries had been made in township 6-4? A. No.

Q. So that as to the land involved in this litigation, all final proofs which were offered prior to June, 1902, were held up for approval?

A. That is correct, yes.

Q. And in each of those cases, before final certificate and final receipt were issued, you protected yourself with a non-alienation affidavit?

A. We required those, yes.

Q. Now, those non-alienation affidavits were filed,

(Testimony of Edward E. Garrett.)

I suppose, with the papers in the case?

A. Yes.

Q. And were all, I suppose, in substance like the nine that have been introduced here?

A. I didn't examine those specially. The purport of the affidavit was that they had not sold, assigned, or transferred their interest in the land, or made any agreement to sell, assign, or transfer their interest.

(Hands witness papers.)

A. Yes, they were in substance the same as these.

Q. I notice that in the affidavits they testified that they had not alienated or agreed to alienate the timber thereon since the date of said final proof, or at all, so they were all required to say that they hadn't sold since they had tendered their final proof and paid in their money?

A. That is correct.

Q. Now, Mr. Garrett, when you was on the stand the other day, you testified with reference to Mr. Louis L. Sharp having made a trip to see Senator Foster and Mr. Campbell some time in the latter part of 1902. That trip, I believe, was made in November, 1902. At that time no patents had been issued by the Government to any of the land involved in this litigation?

A. I think not.

Q. I think the first patents were issued in 1904, as I remember. Now, what lands were held up at that time that are involved in this litigation, Mr. Garrett?

A. Well, I can't answer specifically as to all of

(Testimony of Edward E. Garrett.)

them; among them was the Anderson entry.

Q. Arthur Anderson? A. Yes.

Q. Those five—Nugent— A. Those five.

Q. Just name them?

A. Arthur Anderson, James T. Ball, Abel E. Hunter, Albert Nugent, Harvey H. Wells, I think it was, and I think also at that time the Jennie E. Wells, the Granger entries, Mr. and Mrs. Granger.

Mr. GORDON.—Homer Granger?

A. Homer Granger; I think there was about a dozen of them involved in the reports that the special agent had made specifically as to those.

Mr. BUNDY.—You have named five, with Jennie Wells six; now it didn't of course, involve any claims where final proofs had been approved and final receipts issued?

A. This trip you have reference to?

Q. No; I am speaking of lands that were held up at the time he made this trip?

A. No; these that final certificates had been issued on were not supposed to be involved.

Q. Arthur Anderson, Nugent, Ball, Hunter and Wells—final receipt had not been issued in their cases?

A. I think in one of those cases the final receipt had been issued; I think through a misunderstanding as to what Sharp had reported, I think the Ed Hunter, if I remember correctly, the final receipt did issue—in one of them it did, in one of those five.

Q. Jennie Wells was never issued?

A. No, hers was never issued; I think John I.

(Testimony of Edward E. Garrett.)

Wells was also involved at that time.

Q. Homer Granger, his final receipt had issued in July, 1902. That wasn't involved at the time he was up there, was it?

A. As I say, I am not positive as to just the ones.

Q. You spoke of his wife; we haven't heard of any evidence about hers?

A. She had an entry, made at the same time.

Q. Was that issued?

A. No, I think not; I think that is still pending; I think the Homer Granger entry is still pending—I wouldn't be positive as to that, however.

Q. That is H. C. Granger? A. Yes.

Q. His patent was issued long ago?

A. I might be mistaken as to the particular ones.

Q. But no patents had issued at the time Mr. Sharp made the trip, so they weren't being held up for lack of patents—all the entries were in that condition, weren't they?

A. Those that the final certificates and receipts had issued on were going through the regular course to patent, but these that the final receipt and certificate had not issued on, or against which there was a special agent report, were held up in the General Land Office.

Q. And those were the particular entries that Mr. Sharp was making this trip for, as you understood it? A. Yes.

Q. At that time a great many entries had been made, a great majority of them had gone to final receipt in the regular course, and some dozen, I think

(Testimony of Edward E. Garrett.)

you say, had adverse reports made against them, and the land office here had not issued final receipt or certificate, and that was the bunch of entries that was held up at that time?

A. Either we had not issued the final receipt, or there had been an adverse report; I mean by that that there was an adverse report in some cases that we had issued final certificate on.

Q. Can you tell which ones those were?

A. I think there was an adverse report in the Hunter case, and in that case there was a final receipt and certificate issued.

Q. That was the Abel E. Hunter case?

A. Yes; that is, as I remember.

Q. And with the exception of the Hunter claim—there was two of them—Kate Hunter?

A. Yes, that was his mother.

Q. So that with the exception of the Abel E. Hunter claim, your recollection is that all of the entries which were held up at the time Mr. Sharp had the conference with Mr. Foster had not gone in final receipt? A. That is as I remember it, yes.

Q. Now, Mr. Garrett, the reason I asked you about claims involved in this action at that time was because the claims of Arthur Anderson, James T. Ball, Abel E. Hunter, Harvey H. Wells, Albert Nugent, and Jennie Wells, those you mentioned, are not involved in this action, and I would like to have you go through the claims that are involved in this action, and I show you the bill of complaint in this action and ask you to go through those entries and

(Testimony of Edward E. Garrett.)

tell me if there are any one of the entries there, in November, 1902, which had not gone to final proof, or which were involved in, or which were included in the entries that were held up at that time?

A. I don't know that I can pick them out of this list.

Q. Well, you gathered, I think you testified the other day that you had gathered from some talk you had with Mr. Sharp that his trip to see Senator Foster or Mr. Campbell had to do with certain of what was spoken of as "held-up claims."

A. Yes, that is correct.

Q. And the held up claims at that time were claims which had gone to final receipt?

A. I think that is correct; there might be one or two—

Q. So we can tell by referring to the date when final receipts were issued that we have in evidence, and wherever the final receipts were issued prior to that time, then such claim was not among those that were held up, as you spoke of it, at the time Mr. Sharp made the trip?

A. One—that Hunter claim—would be an exception.

Q. That is not involved here, so I don't care about that?

A. The Hunter entry, as I remember final receipt was issued, and it was subsequently cancelled, along with the Arthur Anderson.

(Testimony of Edward E. Garrett.)

Redirect Examination.

(By Mr. GORDON.)

Q. Did I understand you to say that Kate Hunter was the mother of Abel Edward Hunter?

A. Yes.

Q. Where did she live, Mr. Garrett?

A. At the time she made the entry, I think she lived at Centerville, in Boise Basin.

Q. Where did Edward Abel Hunter live at that time? A. There also, I think.

Q. Do you know whether he and his mother lived together?

A. I don't know; I presume they did.

Q. Do you remember whether in that report that you referred to of Sharp's, the claim of Oral and Samuel Dye were in that report?

A. I think they were, one or both of them.

Q. Do you remember whether Patrick Downs' claim was under investigation at that time?

A. I think not.

Q. Henry Snow? A. No, I think not.

Q. Do you remember the contest case, Mr. Garrett, over the Oral Dye claim? A. Yes.

Q. Do you know who represented him as attorney before the land office? A. L. M. Pritchard.

Recross-examination.

(By Mr. BUNDY.)

Q. That is the claim where the Secretary of the Interior finally held that the Government abandoned all charges of fraud on the trial, reversed that portion?

(Testimony of Edward E. Garrett.)

A. The Secretary modified the decision of the Commissioner, which affirmed the local office, and held that there wasn't sufficient evidence, as I remember, to cancel the entry, and left it in the discretion of the Commissioner for further investigation.

Q. Didn't the Secretary say that the Government practically abandoned all charges of fraud?

A. I think the Secretary referred to the fact that the special agent abandoned the charges of fraud, but not that the Government abandoned the charges of fraud.

Q. That is not involved in this action anyway, is it, Mr. Garrett? A. I don't know as to that.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Garrett, I understand that it will be inconvenient for you to come back here this afternoon?

A. Yes; I have got to leave at one o'clock to go to Idaho City; I have a case that comes up there in the morning.

(Witness excused.)

**[Stipulation Substituting Stipulation for That of
March 4, 1909.]**

It is stipulated that the stipulation entered into in open court on March 4, 1909, relative to stubs, checks, and bank account of Frank Steunenbergh be and hereby is withdrawn, and the following stipulation is hereby agreed to and substituted in lieu of said stipulation of March 4th. It is further stipulated that complainant has produced in court the

loose leaf ledger account of Frank Steunenberg with the Commercial Bank of Caldwell, Idaho, both personally and as agent, and that such account has been offered and received in evidence, and that such account shows that at various times the account of Frank Steunenberg, personally, was overdrawn in varying amounts, and that his account as agent was overdrawn at various dates other than that included in the above stipulation, and that where the balance is shown in red ink such amount indicates an overdraft and the amount so overdrawn.

This stipulation is not intended to withdraw the statement referred to in said stipulation of March 4th, but the foregoing stipulation shall be attached to such statement as such statement now appears of record.

It is further stipulated that the Clerk of the court may open the depositions taken in behalf of the parties hereto at Seattle, Portland, San Francisco, Reno, Los Angeles, St. Paul, and Eau Claire, to the end that the evidence taken on the part of the complainant may be bound together, and the evidence taken on the part of the defendant be bound separately, and the entire record paged consecutively.

Mr. KEIGWIN.—Let the record show that counsel for the complainant ask for an adjournment until ten o'clock on Monday morning, June 14th, upon the ground that pieces of documentary evidence which they desire to introduce have been accidentally delayed in the mails, and that the testimony taken on behalf of the defendants at Eau Claire, Wisconsin, has not yet been filed in this cause, and counsel for

complainant desire to examine the said testimony before closing their case.

Mr. BUNDY.—If the Examiner please, the time fixed for complainant to take its rebuttal evidence expires to-day by order of Judge Dietrich, and for that reason I object to any adjournment beyond that time, unless the Court shall first extend their time.

Mr. KEIGWIN.—Let the record show that counsel for the complainant are making application to the Court for an extension of their time, on the grounds above mentioned.

[Order Extending Time to Take Testimony.]

The COURT.—It is ordered that the complainant be given until and including Monday, June 14th, in which to complete its testimony, with the understanding on the part of the Court that this extension shall not be offered or considered as a reason for postponing or extending the time for the final submission of the case.

[Proceedings Had Monday, June 14th.]

Court met on Monday, June 14th, pursuant to order of adjournment, the Examiner and counsel for the respective parties being present, and the following proceedings were had, to wit:

Mr. KEIGWIN.—We offer in evidence the entry papers produced from the files of the General Land Office in the case of the timber and stone entry of John J. Pawley, consisting of the sworn statement, the testimony taken on the final proof of said entryman, the receiver's receipt and the register's certificate issued to the said entryman, the patent issued to the said entryman, and a deed from the said entry-

man to Horace S. Rand, all covering the east half of the southeast quarter of section 32, and the west half of the southwest quarter of section 33, township 6 north, range 8 east, Boise Meridian.

John J. Pawley papers marked Plaintiff's Exhibit No. 161.

Mr. KEIGWIN.—We offer the entry papers of William F. Roberts upon T. & S. entry 1947, consisting of papers corresponding to those which have been enumerated in the case of John J. Pawley.

William F. Roberts papers marked Plaintiff's Exhibit No. 162.

Mr. KEIGWIN.—We offer the corresponding papers in the cases of the several entries of the other persons mentioned in the stipulation entered in this cause under date of March 11, 1909, and the eighty-seven sheets attached thereto.

Mr. BUNDY.—We haven't had an opportunity to go through these entry papers, don't know what they are, but you have offered certain specified papers in the entry of Mr. Pawley, and then have offered all similar or like papers, corresponding papers, in the entries of all the others. Have you gone through them so that you know that they are as you say?

Mr. GORDON.—Yes, we have compared them with the stipulation.

Mr. BUNDY.—They contain the regular sworn statement required by the land office, signed and sworn to by the entrymen, do they?

Mr. KEIGWIN.—Yes.

Mr. BUNDY.—And the regular final proof papers and the cross-examination provided by the rules and regulations?

Mr. KEIGWIN.—Yes.

Mr. BUNDY.—And they contain, do they, the regular patent issued by the United States to prove each and every claim, Mr. Gordon?

Mr. GORDON.—I think they contain the patent of every one, but you remember the other day I offered in evidence a whole bunch of patents; I don't know whether they are in or not.

Mr. BUNDY.—Patents have been issued in each one of the cases you are offering?

Mr. KEIGWIN.—Yes, in each one.

Mr. BUNDY.—Will you kindly look up the entry of Roy Dye, his entry being in the stipulation.

Mr. GORDON.—Of course, if there wasn't any patent issued it isn't there.

Mr. BUNDY.—He is embraced in the stipulation.

Mr. GORDON.—If there wasn't any patent issued, the stipulation says that patent was not issued.

Mr. BUNDY.—What I am trying to get at is, you are offering a lot of papers, which are the regular timber and stone papers required by the Timber and Stone Act and the rules and regulations of the Department, up to the time patent was issued?

Mr. GORDON.—All mentioned in the stipulation.

Mr. BUNDY.—Is there anything unusual about any of these files, or are they all valid, or purport to be on their face regular papers prepared in the usual way?

Mr. GORDON.—All regular forms, just the same as the others that have gone in here.

Mr. BUNDY.—I am trying to find out whether these papers you are offering, on their face show the

regular things in all entries, including all up to the patent, where there was any.

Mr. KEIGWIN.—Where there was any?

Mr. GORDON.—I think there were one or two cases that we didn't find the deed in.

Mr. FRASER.—Let the record show that counsel for the defendants object to the introduction of these papers for the reason that they don't tend to prove any of the allegations of the bill of complaint, and move to strike the same from the record.

Mr. BUNDY.—Defendants further object specifically to the introduction of any of the final proof papers of John Christenson, Roy Dye, G. G. Gibson, Kate Hunter, Lydia P. Humphrey, Robert E. Heel, H. T. James, John Kinkaid, J. J. Keane, H. A. Snow, Minnie Snow, and J. W. Williams, for the reason that the entries of the persons named are not involved in this action, and the defendants are not alleged to have acquired any lands by or through any of the said entrymen, and that such entries are not involved in this action, and further specifically objects to the introduction of any papers offered by the entrymen on final proof, for the reason that such evidence is incompetent, irrelevant and immaterial under the allegations of this complaint; and specifically objects to all of the evidence offered for the reason and upon the grounds that it does not tend to show that the entries mentioned were made at the suggestion, request, or by the procurement of the defendant Barber Lumber Company, or any of its officers, employees, or agents.

Henry Ries papers marked Plaintiff's Exhibit No.

163.

John W. Ross papers marked Plaintiff's Exhibit No. 164.

Gustave H. Rothine papers marked Plaintiff's Exhibit No. 165.

David G. Thompson papers marked Plaintiff's Exhibit No. 166.

Charles A. Walker papers marked Plaintiff's Exhibit No. 167.

John W. Williams papers marked Plaintiff's Exhibit No. 168.

George S. Warren papers marked Plaintiff's Exhibit No. 169.

Elizabeth Willhite papers marked Plaintiff's Exhibit No. 170.

General F. Willhite papers marked Plaintiff's Exhibit No. 171.

Wilbert F. Wilmot papers marked Plaintiff's Exhibit No. 172.

Walter L. Wilson papers marked Plaintiff's Exhibit No. 173.

Walter L. Wilson papers marked Plaintiff's Exhibit No. 174.

Daniel P. Woodmore papers marked Plaintiff's Exhibit No. 175.

George H. York papers marked Plaintiff's Exhibit No. 176.

Harrison Ownbey papers marked Plaintiff's Exhibit No. 177.

James Ownbey papers marked Plaintiff's Exhibit No. 178.

Jens Olsen papers marked Plaintiff's Exhibit No. 179.

William F. Noble papers marked Plaintiff's Exhibit No. 180.

Frank B. Nickerson papers marked Plaintiff's Exhibit No. 181.

Charles Nelson papers marked Plaintiff's Exhibit No. 182.

Samuel Marcum papers marked Plaintiff's Exhibit No. 183.

William J. Marcum papers marked Plaintiff's Exhibit No. 184.

Thomas F. Kelley papers marked Plaintiff's Exhibit No. 185.

Moses H. Kempner papers marked Plaintiff's Exhibit No. 186.

Beulah B. Lake papers marked Plaintiff's Exhibit No. 187.

Gertrude Lewin papers marked Plaintiff's Exhibit No. 188.

William H. Lewin papers marked Plaintiff's Exhibit 189.

Uriah F. McBurney papers marked Plaintiff's Exhibit No. 190.

Michael Koppas papers marked Plaintiff's Exhibit No. 191.

Luella Jaycox papers marked Plaintiff's Exhibit No. 192.

Orlin R. Jaycox papers marked Plaintiff's Exhibit No. 193.

Oliver Johnson papers marked Plaintiff's Exhibit No. 194.

William Judge papers marked Plaintiff's Exhibit No. 195.

Burt Resser papers marked Plaintiff's Exhibit No. 196.

Thaddeus M. Glass papers marked Plaintiff's Exhibit No. 197.

Joseph French papers marked Plaintiff's Exhibit No. 198.

John D. French papers marked Plaintiff's Exhibit No. 199.

Altha Gillum papers marked Plaintiff's Exhibit No. 200.

James A. Hamilton papers marked Plaintiff's Exhibit No. 201.

Earl A. Harrington papers marked Plaintiff's Exhibit No. 202.

Roy Dye papers marked Plaintiff's Exhibit No. 203.

Joseph Ehrmantrout papers marked Plaintiff's Exhibit No. 204.

Margaret H. Ehrmantrout papers marked Plaintiff's Exhibit No. 205.

George H. Ensworth papers marked Plaintiff's Exhibit No. 206.

Victoria L. Eoff papers marked Plaintiff's Exhibit No. 207.

Anna Fisher papers marked Plaintiff's Exhibit No. 208.

Uriah Flint papers marked Plaintiff's Exhibit No. 209.

J. Christenson papers marked Plaintiff's Exhibit No. 210.

George M. Cutler papers marked Plaintiff's Exhibit No. 211.

William E. Cavanaugh papers marked Plaintiff's Exhibit No. 212.

Charles W. Clawson papers marked Plaintiff's Exhibit No. 213.

Edward J. Dockery papers marked Plaintiff's Exhibit No. 214.

Eva Hunt Dockery papers marked Plaintiff's Exhibit No. 215.

John U. Cassell papers marked Plaintiff's Exhibit No. 216.

Andrew Campbell papers marked Plaintiff's Exhibit No. 217.

Abbie M. Briggs papers marked Plaintiff's Exhibit No. 218.

Adella C. Brookhart papers marked Plaintiff's Exhibit No. 219.

Edgar E. Bush papers marked Plaintiff's Exhibit No. 220.

John H. Byro papers marked Plaintiff's Exhibit No. 221.

Hortense D. Horner papers marked Plaintiff's Exhibit No. 222.

Samuel C. Bowen papers marked Plaintiff's Exhibit No. 223.

Samuel S. Horner papers marked Plaintiff's Exhibit No. 224.

Homer G. Allen papers marked Plaintiff's Exhibit No. 225.

Ada V. Austin papers marked Plaintiff's Exhibit No. 26.

George R. Avery papers marked Plaintiff's Exhibit No. 227.

Smith Barker papers marked Plaintiff's Exhibit No. 228.

Henry F. Benedix papers marked Plaintiff's Exhibit No. 229.

Samuel M. Blandford papers marked Plaintiff's Exhibit No. 230.

Emma L. Blandford papers marked Plaintiff's Exhibit No. 231.

John Bates papers marked Plaintiff's Exhibit No. 232.

Mr. KEIGWIN.—We offer in evidence the affidavits of non-alienation filed in the local land office, and heretofore called for by the defendants in this cause, being the affidavits of

Wilbert F. Wilmot, dated July 18, 1902.

(Marked Plaintiff's Exhibit No. 233.)

Patrick H. Downs, dated July 24, 1902.

(Marked Plaintiff's Exhibit No. 234.)

Norman H. Young, dated July 12, 1902.

(Marked Plaintiff's Exhibit No. 235.)

Louis M. Pritchard, dated June 13, 1902.)

(Marked Plaintiff's Exhibit No. 236.)

Mary A. Monroe, dated April 7, 1902.)

(Marked Plaintiff's Exhibit No. 237.)

Michael Koppas, dated July 31, 1902.

(Marked Plaintiff's Exhibit No. 238.)

Uriah Flint, dated July 21, 1902.

(Marked Plaintiff's Exhibit No. 239.)

Leonora Hollister, dated January 21, 1902.

(Marked Plaintiff's Exhibit No. 240.)

Margaret Ehrmantrout, dated December 15, 1903.

(Marked Plaintiff's Exhibit No. 241.)

Eva Hunt Dockery, dated December 20, 1902.

(Marked Plaintiff's Exhibit No. 242.)

Lewis K. Burns, dated June 24, 1902.

(Marked Plaintiff's Exhibit No. 243.)

James H. Hamilton, dated July 28, 1902.

(Plaintiff's Exhibit No. 244.)

George M. Cutler, dated July 25, 1902.

(Plaintiff's Exhibit No. 245.)

Abbie H. Briggs, dated September 20, 1904.

(Plaintiff's Exhibit No. 246.)

John Bates, dated July 15, 1902.

(Plaintiff's Exhibit No. 247.)

Samuel Clark Bowen, dated June 23, 1902.

(Plaintiff's Exhibit No. 248.)

Henry Ries, dated July 30, 1902.

(Plaintiff's Exhibit No. 249.)

William F. Roberts, dated July 18, 1902.

(Plaintiff's Exhibit No. 250.)

William Pearson, dated June 23, 1902.

(Plaintiff's Exhibit No. 251.)

Margaret Pearson, dated June 19, 1902.

(Plaintiff's Exhibit No. 252.)

John J. Keane, dated April 25, 1902.

(Plaintiff's Exhibit No. 253.)

Luella Jaycox, dated October 16, 1903.

(Plaintiff's Exhibit No. 254.)

Lelia Lee, dated March 6, 1902.

(Plaintiff's Exhibit No. 255.)

Annie E. Kempner, dated February 18, 1903.

(Plaintiff's Exhibit No. 256.)

Elizabeth Willhite, dated January 27, 1903.

(Plaintiff's Exhibit No. 257.)

Louisa B. West, dated January 29, 1902.

(Plaintiff's Exhibit No. 258.)

Evelyn O'Farrell, dated July 28, 1902.

(Plaintiff's Exhibit No. 259.)

Beulah B. Lake, dated September 20, 1904.

(Plaintiff's Exhibit No. 260.)

Frank B. Nickerson, dated April 28, 1902.

(Plaintiff's Exhibit No. 261.)

Charles Nelson, dated August 5, 1902.

(Plaintiff's Exhibit No. 262.)

John I. Wells, dated June 18, 1904.

(Plaintiff's Exhibit No. 263.)

George H. Ensworth, dated June 15, 1902.

(Plaintiff's Exhibit No. 264.)

John C. Monroe, dated July 23, 1902.

(Plaintiff's Exhibit No. 265.)

An additional affidavit of Mary A. Monroe, dated August 1, 1902.

(Plaintiff's Exhibit No. 266.)

Henry F. Benedix, dated July 17, 1902.

(Plaintiff's Exhibit No. 267.)

Arthur E. Brookhart, dated August 26, 1902.

(Plaintiff's Exhibit No. 268.)

Thaddeus M. Glass, dated July 28, 1902.

(Plaintiff's Exhibit No. 269.)

Elizabeth Schmelzel, dated February 16, 1903.

(Plaintiff's Exhibit No. 270.)

Josie M. Ross, dated December 23, 1903.

(Plaintiff's Exhibit No. 271.)

Charles A. Walker, dated July 16, 1902.

- (Plaintiff's Exhibit No. 272.)
Uriah F. McBurney, dated August 1, 1902.
(Plaintiff's Exhibit No. 273.)
Susan N. Arbuckle, dated July 28, 1902.
(Plaintiff's Exhibit No. 274.)
Emma Bilderback, dated January 28, 1903.
(Plaintiff's Exhibit No. 275.)
Delilah Bayhouse, dated January 28, 1903.
(Plaintiff's Exhibit No. 276.)
Clifton C. Bliven, dated April 29, 1903.
(Plaintiff's Exhibit No. 277.)
James O. Baker, dated July 22, 1902.
(Plaintiff's Exhibit No. 278.)
Louisa E. Butler, dated January 8, 1903.
(Plaintiff's Exhibit No. 279.)
Harry L. Clyne, dated August 16, 1902.
(Plaintiff's Exhibit No. 280.)
M. Laeta Eagleson, dated March 17, 1904.
(Plaintiff's Exhibit No. 281.)
Mack Gillum, dated July 29, 1902.
(Plaintiff's Exhibit No. 282.)
Addie G. Gibberd, dated December 23, 1902.
(Plaintiff's Exhibit No. 283.)
Homer C. Granger, dated July 15, 1902.
(Plaintiff's Exhibit No. 284.)
Walter L. Harrison, August 25, 1902.
(Plaintiff's Exhibit No. 285.)
Joseph M. Hollister, dated July 25, 1902.
(Plaintiff's Exhibit No. 286.)
Fannie R. Hart, dated December 23, 1902.
(Plaintiff's Exhibit No. 287.)
Caro F. B. Kingsley, dated December 22, 1902.

(Plaintiff's Exhibit No. 288.)

Mary Link, dated August 7, 1902.

(Plaintiff's Exhibit No. 289.)

Henrietta B. Martin, dated March 18, 1903.

(Plaintiff's Exhibit No. 290.)

Wheeler H. Martin, dated March 8, 1904.

(Plaintiff's Exhibit No. 291.)

Pearl I. Nusbaum, dated February 14, 1903.

(Plaintiff's Exhibit No. 292.)

Mary E. Ownbey, dated December 11, 1902.

(Plaintiff's Exhibit No. 293.)

Arietta H. Stahl, dated March 17, 1903.

(Plaintiff's Exhibit No. 294.)

Mary Starn, dated December 18, 1902.

(Plaintiff's Exhibit No. 295.)

Jennie E. Thompson, dated November 11, 1902.

(Plaintiff's Exhibit No. 296.)

John U. Cassell, dated November 4, 1902.

(Plaintiff's Exhibit No. 297.)

Gustave H. Rothine, dated July 14, 1902.

(Plaintiff's Exhibit No. 298.)

Mr. BUNDY.—You have offered a large number of unidentified affidavits, purporting to be signed by the entrymen named, with no proof that they are affidavits made by them. I suppose those are taken from the files of the land office, are they?

Mr. KEIGWIN.—Yes.

Mr. BUNDY.—And are a part of the files of each of the several entrymen in the land office?

Mr. KEIGWIN.—Yes.

Mr. BUNDY.—And produced from the files of the land office?

Mr. KEIGWIN.—We will prove that by the register, if you want us to.

Mr. BUNDY.—I have no objection to them, with that understanding.

Mr. FRASER.—Counsel for the defendant objects to the introduction of each and all of these non-alienation affidavits, for the reason that they are incompetent, irrelevant and immaterial, and do not tend to prove any of the allegations of the bill, and each and all of them show upon their face that they were made and executed after final proof had been made in each entry; therefore they would be immaterial and incompetent.

Mr. BUNDY.—On the statement of counsel that they are produced from the files of the land office, we won't ask you to identify them.

[Testimony of S. L. Hodgin, on Behalf of the Complainant (in Rebuttal).]

S. L. HODGIN, produced as a witness on behalf of the complainant, in rebuttal, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your full name, Mr. Hodgin.

A. Shadrach L. Hodgin.

Q. You are the United States Marshal for the District of Idaho?

A. Yes, sir.

Q. And have been such for how long?

A. Since June 22, 1908.

Q. It is your duty to serve all subpoenas that are called for in praecipis that are issued by this Court,

(Testimony of S. L. Hodgin.)

is it? A. Yes, sir.

Q. And I will ask you if you have had praecipies for subpoenas for the persons whose names are set out in the list I hand you, and whether or not you issued subpoenas for those persons, and whether, after diligent search, you made the return of not found?

A. The praecipies were filed with the clerk of the court; the clerk of the court issued the subpoena and placed it in my hands, commanding me to subpoena the people whose names are attached to the list, and, after due search and diligent inquiry by myself and deputies, we were unable to find the people named in this list within the District of Idaho.

Q. And the return of not found was made on each subpoena?

A. Yes, sir; this list was taken from the returns of the subpoenas themselves.

Mr. GORDON.—We offer that paper in evidence. (Marked Plaintiff's Exhibit No. 299.)

Mr. FRASER.—We will object to the introduction of the paper as incompetent, irrelevant and immaterial, and not tending to prove any of the allegations of the bill, and not competent for any purpose whatever, and we move to strike the same from the record.

Mr. KEIGWIN.—Q. Mr. Hodgin, do you know how far it is from Boise to Idaho City?

A. Thirty-six miles; it is marked thirty-six miles on the post route map which is prepared by the Postal Department of the United States.

(Testimony of S. L. Hodgins.)

Q. That is the map by which you are guided in charging your fees for mileage? A. Yes, sir.

Q. Do you know how far it is from Idaho City to Centerville?

A. Eight and a half miles, according to that map.

Q. Do you know how far it is from Centerville to Pioneerville?

A. Not exactly, I don't remember—between five and seven miles, is my recollection of it; I don't know which it is.

Mr. GORDON.—We ask that this paper which the marshal has produced be copied into the record.

Plaintiff's Exhibit No. 299.

“Subpoenas were issued and placed in the hands of the Marshal for service upon the following named witnesses in the case of United States vs. Barber Lumber Co. et al. After due search and diligent inquiry, the Marshal was unable to find the said witnesses within the District of Idaho, and therefore made the return upon each subpoena, ‘Not Found.’

Subpoenas returned and filed February 26, 1909:

Online Jaycox

Thomas F. Kelly

Leuella Jaycox

William F. Noble

Harrison F. Ownbey

James Owenby

John J. Pawley

Frank H. Cooper

James T. Ball

Abel E. Hunter
George M. Cutler
Michael Koppas
Samuel C. Bowen
Thaddeus M. Glass
Moses H. Kempner
Abbey M. Briggs
Beulah B. Lake
Aaron Owenby
Junius Wright
Joseph Ehrmantraut
Margaret H. Ehrmantraut
James H. Hamilton
Robert E. Hoel
Edgar E. Bush
Emma Lou Blandford
Adella C. Brookhart
Martin S. Stephenson
Lettie L. Stephenson
Harry B. Noble

2. Witnesses not found—U. S. vs. Barber Lumber
Co. et al.

Helen Sullivan
General L. Willhite
Elizabeth Willhite
Lena D. Wilson
Walter L. Wilson
George W. Avery
Andrew Campbell
Charles W. Clawson

Returned and filed March 3d, 1909.

William F. Roberts

Nellie J. Thompson

Homer G. Allen

Smith Barker

John Christenson

George H. Ensworth

John M. Byro

John U. Cassell

Uriah Flint

Henry Humphrey

Returned and filed March 4th, 1909:

David G. Thompson

Earl A. Harrington

Ada V. Austin

Willard C. Austin

Samuel Markum

William Judge

Frederick Thurman

John D. French

Joseph French

William H. Lewin

Alexander J. Rowan

George H. York

N. P. Joplin

Henry Rics

3. Witnesses not found—U. S. vs. Barber Lumber
Co. et al.

John Nelson

Altha Gillum

Henry F. Benedix

John Bates

Frank B. Nickerson

William F. Snow

(Testimony of S. L. Hodgkin.)

Gustave H. Rothine

Charles A. Walker

Uriah F. McBurney

John C. Monroe

Daniel P. Woodmore

Frank Lane

William J. Marcum

Thomas S. Humphrey

John W. Williams

Roy Dye

Gertrude Lewin

Albert B. Ewing

Jens Olson

William E. Cavanaugh

John W. Ross

Oliver Johnson

Samuel M. Blandford

Charles Beckley

Mantie Beckley

Returned and filed March 12, 1909:

Kate Hunter''

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Hodgkin, will you state on the record how much money the United States Government has paid out for witness fees, and in subpoenaing witnesses in this case, through your office?

A. I couldn't, without going over the records.

Q. Will you kindly look it up?

A. Do you want me to prepare a statement that I can swear to?

(Testimony of S. L. Hodgins.)

Q. Yes, approximately.

A. Well, I can prepare it exactly, to this date.

Q. I would like to know.

A. All right.

(Witness excused.)

**[Testimony of John M. Haines, on Behalf of the
Complainant.]**

JOHN M. HAINES, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. KEIGWIN.)

Q. Mr. Haines, in the year 1903, in the month of August in that year, you were a notary public?

A. Yes, sir, I was.

Q. Where did you live then?

A. In Boise, Ada County, Idaho.

Q. I show you a paper, purporting to be a deed to which your name appears, attached as attesting witness, and on the back of which is a certificate of acknowledgment purporting to be signed by you, and ask you if those two signatures are yours.

A. Yes, sir, they are.

Q. Is that your notarial seal attached there?

A. Yes, sir.

Mr. KEIGWIN.—We offer in evidence deed of H. A. Snow and wife, Minnie Snow, to A. E. Palmer, dated August 17, 1903, covering the south half of the southwest quarter, and the south half of the southeast quarter, also the north half of the south-

(Testimony of John M. Haines.)

west quarter and the south half of the northwest quarter of section 8, township 7 north, range 5 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 300.)

Mr. BUNDY.—We object to the introduction of this deed as incompetent, irrelevant and immaterial, and for the reason and upon the grounds that the lands embraced in the deed are not involved in this action, that neither Henry A. Snow nor Minnie Snow, his wife, acquired any lands through the Timber and Stone Act which are involved in this action, and for that reason the same is incompetent, irrelevant and immaterial.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Haines, you were in 1902 and 1903, and up to the present time are engaged in the real estate business in this city? A. Yes, sir.

Q. Associated with Mr. W. E. Pierce?

A. Yes, sir; W. E. Pierce & Company—I am one of that firm.

Q. Were you or your firm employed in 1903, I think it was, by Governor Steunenberg, acting for the Barber Lumber Company, to buy options and subsequently buy the land upon which their mill and manufacturing plant is located in this county?

Mr. KEIGWIN.—We object to it, first, upon the ground and for the reason that it goes beyond the examination in chief, and, second, for the reason that the subject matter of the question is immaterial and irrelevant to any of the issues in this case.

(Testimony of John M. Haines.)

A. Why, I was employed, as a member of said firm of W. E. Pierce & Company, for such business about that time—I can't say positively as to the year.

Mr. BUNDY.—Q. And did you, acting in that capacity, procure certain options from various gentlemen who owned the lands upon which the manufacturing plant of the Barber Lumber Company is now located? A. I did.

Q. And did you take those options in the name of the Barber Lumber Company, or in the name of Mr. Pierce, or other persons?

Mr. KEIGWIN.—The same objection as before.

A. My recollection is that all such options were taken in the name of Mr. Pierce, though I am not positive as to all of them, or every one of them; there were none, however, taken in the name of the Barber Lumber Company.

Mr. BUNDY.—Q. And do you recall—those options were exercised finally, and the land procured?

A. Yes, sir.

Q. And do you recall who the deed was taken to, when it was taken? A. No, I do not.

Q. Do you recall that some of them were taken in the name of Horace S. Rand?

A. I am sure that some of the deeds—I can't say but what all of them were made to Mr. Rand.

Mr. GORDON.—This property that the inquiry has been made of is within five or six miles of Boise, isn't it, up here on the Boise River?

A. Yes, sir.

(Testimony of John M. Haines.)

Mr. BUNDY.—It is not timber land at all, is it?

A. No, sir.

(Witness excused.)

**[Testimony of L. G. Chapman, on Behalf of the
Complainant (in Rebuttal).]**

L. G. CHAPMAN, called as a witness on behalf of the complainant, in rebuttal, testified as follows:

Direct Examination.

(By Mr. KEIGWIN.)

Q. Mr. Chapman, I show you a document here, purporting to be a deed running from John Kinkaid to A. E. Palmer, under date of April 16, 1904, and to be executed in the presence of L. M. Pritchard, as attesting witness, and bearing an acknowledgment certified to by Mr. Pritchard, as notary public, and ask you if you can recognize the signature of John Kinkaid, the grantor in that instrument.

A. No, I cannot.

Q. Do you know the signature of L. M. Pritchard?

A. I am not familiar enough with it to identify it.

Mr. BUNDY.—Why, man, the acknowledgment makes all the proof you want.

Mr. KEIGWIN.—I think so, but I want to see if I cannot put it beyond all exception.

Q. Mr. Chapman, didn't you produce that deed from your files when you were last under examination in this case? A. Yes, sir.

Q. As a document belonging to your files and showing your title to the land? A. Yes.

(Testimony of L. G. Chapman.)

Mr. KEIGWIN.—We offer it in evidence.

(Marked Plaintiff's Exhibit No. 301.)

Mr. BUNDY.—We object to it as incompetent, irrelevant and immaterial, being a deed from John Kinkaid to A. E. Palmer, for the reason that the lands embraced in this deed are not involved in this action, and it is not alleged in the bill that the defendants acquired any land through John Kinkaid, or through any timber and stone entry made by Mr. Kinkaid.

Mr. KEIGWIN.—I show you another deed, purporting to run from Patrick H. Downs to A. E. Palmer, dated August 27, 1904, attested by L. M. Pritchard, as witness, and bearing acknowledgment certified by Mr. Pritchard, and ask you if you can identify any of the signatures to that?

A. No, I cannot.

Q. You know Mr. Downs' signature, don't you?

A. No, I don't believe I do.

Q. Well, that is produced from your files, is it not?

A. Yes.

Q. And is like the deed of Mr. Kinkaid, just introduced?

A. Yes.

Q. A part of your records?

A. Yes.

Mr. KEIGWIN.—We offer this in evidence, and ask that it be marked as an exhibit.

(Marked Plaintiff's Exhibit No. 302.)

Q. I show you, Mr. Chapman, another deed, bearing date October 20, 1902, running from William F. Snow to A. E. Palmer, and ask you if you recognize the signatures to that.

(Testimony of L. G. Chapman.)

A. No, I don't know any of them.

Mr. BUNDY.—When is that?

Mr. KEIGWIN.—October 20, 1902, William F. Snow.

Q. This deed comes from your files, I believe?

A. Yes.

Q. And is a part of your chain of title to that land? A. Yes.

Mr. KEIGWIN.—We offer the deed in evidence with the certificate of recordation of Mrs. Gorman.

(Marked Plaintiff's Exhibit No. 303.)

Mr. BUNDY.—We object to it as incompetent, irrelevant and immaterial to any issue in this case.

Mr. KEIGWIN.—Q. Mr. Chapman, I show you, in like manner, a deed from William H. Humphrey and his wife, Lydia E. Humphrey, to A. E. Palmer, dated March 19th, 1903; Charles M. Wilmot and wife, Florence M. Wilmot, dated March 30, 1903, to A. E. Palmer; James R. Thompson and wife, Nellie J., to A. E. Palmer, under date of August 12, 1903; Charles C. Stevenson and wife, Mattie B. Stevenson, to Horace S. Rand, under date of August 16th, 1904; and Elmer G. Dodds and wife Hannah, under date of September 19, 1903, to Horace S. Rand, and I will ask you if those are also deeds coming from your files, and a part of the records of the office of the Barber Lumber Company showing the title of the Barber Lumber Company to the lands therein described.

Mr. BUNDY.—Defendant objects to the introduction of the deed from Charles C. Stevenson to Horace

(Testimony of L. G. Chapman.)

S. Rand, for the reason that the lands therein mentioned are not involved in this action, and defendants are not charged with having procured any lands through said Stevenson; and we make like objection to the deed of Elmer G. Dodds, for the reason that the lands embraced in said deed are not involved in this action; and the same objection to the deed of Charles M. Wilmot, that the lands embraced in said deed are not involved in this action; and the same objection to the deed of Lydia E. Humphrey, for the reason that the lands embraced in said deed are not involved in this action, and the defendants are not charged with having procured any lands by or through the grantors named.

A. Yes, these are from our files.

Mr. KEIGWIN.—Q. And a part of your records, showing the title of the Barber Lumber Company?

A. Yes.

Q. Mr. Chapman, did you notice as you went along that all of these deeds bear a certificate of recordation by the recorder of Boise County?

A. Yes.

Mr. KEIGWIN.—We offer these in evidence.

(Humphrey deed marked Plaintiff's Exhibit No. 304.)

(Wilmot deed marked Plaintiff's Exhibit No. 305.)

(Thompson deed marked Plaintiff's Exhibit No. 306.)

(Stevenson deed marked Plaintiff's Exhibit No. 307.)

(Testimony of L. G. Chapman.)

(Dodds deed marked Plaintiff's Exhibit No. 308.)

Mr. GORDON.—Q. Mr. Chapman, have you any records or books in your office showing the entries of which second deeds were taken? A. No.

Q. Do you remember of ever having seen the first deed made by Mr. William F. Snow to the property mentioned here? A. No.

Mr. KEIGWIN.—Mr. Chapman, do you know, or have you known, a person by the name of John G. Lietzke? A. Yes.

Q. How long since you have known him?

A. I think about three years, three or four years.

Q. In what way did you know him—socially or in a business way?

A. He was part owner in the stopping place, what is known as the Half-way House, on the Idaho City road, and I know him as such proprietor.

Q. Did you buy some timber land from him?

A. Yes.

Q. Do you remember the description of the land?

A. I don't off hand; it is in township 7-5, but the description I don't remember.

Q. Would you recognize the description if you would see his entry in the register?

A. Hardly; I hardly would recognize his entry from the description.

Q. Have you a deed from Lietzke running to the Barber Lumber Company, or to any person in the interest of the Barber Lumber Company?

A. We have a deed running from Lietzke to the Barber Lumber Company.

(Testimony of L. G. Chapman.)

Q. Would you mind producing it?

A. Yes.

Q. Well, we would like to have that deed.

Mr. BUNDY.—We object to it as incompetent, irrelevant and immaterial, not involved in this action, no charge being made that any land entered by Mr. Lietzke was sold to or procured by the Barber Lumber Company, and we won't produce the deed; there is a limitation on this thing.

Mr. KEIGWIN.—The record shows the refusal of counsel to produce the deed running from Lietzke to the Barber Lumber Company.

Mr. BUNDY.—Yes, and the record will further show their refusal to produce deeds for any lands not in this complaint.

Mr. FRASER.—And the refusal is based upon the ground that the lands are not embraced in the bill.

Mr. KEIGWIN.—Did you ever buy any but the one piece of property from Lietzke?

A. No.

Q. And the piece was a piece of ground entered under the timber land law, was it? A. Yes.

Q. Do you remember when you bought it, approximately?

A. I think we bought it during the fall or winter of 1908.

Mr. GORDON.—Just here last winter?

A. Possibly after the first of January, 1909.

Q. Mr. Chapman, you remember bringing down here copies of your ledger accounts, ledger accounts of the Barber Lumber Company, covering the period

(Testimony of L. G. Chapman.)

during which you have been in charge of the Barber Lumber Company's plant here as manager. Is that correct? A. Yes.

Q. And would that item of purchase appear in the pine land accounts of the company?

A. Yes, it would; I am not sure that the purchase was made until after the date of which that statement was made.

Q. I notice from the accounts that on a date some time in 1908 the pine land account of the Barber Lumber Company shows a charge of \$1.70, I think, for recording this deed of Lietzke's, but I did not find the price or the amount that was paid for the purchase of that property. Now, would that be in the pine land account or in some other?

A. It would be in the pine land account when it finally reached the books.

Q. Of course you would have purchased it before you recorded the deed, wouldn't you?

A. Yes, oh, yes.

Q. You paid cash for it?

A. Undoubtedly; I think the check was drawn—for the purchase of the Lietzke land—was drawn on me, although I am not sure about that.

Q. Did you draw the check?

A. No, I think it was drawn in my favor and I cashed the check.

Q. It was drawn by the cashier of your company here? A. Yes.

Mr. KEIGWIN.—Q. Do you remember how much you paid Mr. Lietzke for his tract?

(Testimony of L. G. Chapman.)

A. No, I don't; I don't remember.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Chapman, in your ledger account, under the pine land account, under date of December 11th—February 12, 1902, issued to Cavanah & Blake, is a charge for money paid out, \$1250, is it not?

A. Yes.

Q. And that \$1250 was for the purchase of the lands, for the purchase of the southeast quarter of the southeast quarter of section 10, and the southwest quarter of the southwest quarter of section 11, and the east half of the northeast quarter of section 15, township 7 north, range 5 east, Boise Meridian. Now, looking at the register of the land office produced here by complainant—will you stipulate that that is the land entered by Mr. Lietzke?

Mr. KEIGWIN.—Certainly.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. Mr. Chapman, did you, on behalf of the Barber Lumber Company, buy the land which was entered and acquired by Mr. Louis M. Pritchard, under his timber and stone land entry? A. No.

Q. Do you know whether or not the company has acquired the property covered by Mr. Pritchard's entry?

A. I think we did; I am not positive.

(Witness excused.)

[Testimony of Frank Martin, on Behalf of the Complainant (Recalled).]

FRANK MARTIN, recalled by complainant, testified as follows:

Direct Examination.

(By Mr. KEIGWIN.)

Q. Mr. Martin, did you, in the year 1903, make an entry under the Timber and Stone Land Act?

A. I did.

Q. Do you remember the date of it?

A. No, I don't; it was in the fall.

Q. I show you a sworn statement under the Timber and Stone Land Act, dated at Boise on the 21st of September, 1903, signed by Frank Martin. Is that your signature?

A. That is my signature.

Q. That was the initiation of your entry, I suppose, then?

A. Yes.

Q. I show you also the receiver's receipt and the register's certificate, issued upon that sworn statement, under date of January 5, 1904, and I suppose those are papers that were issued in your favor.

Mr. BUNDY.—Defendant objects to the introduction of any evidence with reference to the timber and stone entry made by Frank Martin, for the reason that the defendants are not charged in this bill with having acquired any lands from Frank Martin based upon timber and stone entry made by him; and we object to the introduction of the papers shown, for the reason that the lands mentioned in said papers are not involved in this action.

(Testimony of Frank Martin.)

A. I presume these are.

Mr. KEIGWIN.—You did get final certificate?

A. Yes, I did get final certificate on my entry, yes.

Q. I show you the examination and cross-examination of claimant's witnesses taken upon the final proof made upon that statement, and ask you if you recognize the signatures thereto of yourself and your final proof witnesses.

Mr. BUNDY.—I object to the introduction of the final proof papers as incompetent, irrelevant and immaterial.

A. I recognize the signature of myself; I don't recognize the signature of Mr. Henry F. Cassidy and Patrick H. Downs, who were my witnesses.

Q. They were your witness, though?

A. I think they were, but I don't remember that positively.

Mr. KEIGWIN.—We offer in evidence the papers shown to and identified by the witness, and ask that the same be given a proper exhibit number.

(Marked Plaintiff's Exhibit No. 309A to 309L, inclusive.)

Q. Was patent issued? A. Yes, sir.

Q. What is Mrs. Martin's name?

A. Ella L.

Q. Did she make a timber and stone entry at the same time?

A. She did, the same day.

Q. Did she and you join in the same deed, which I now show you, purporting to convey the lands to the Barber Lumber Company? A. Yes.

(Testimony of Frank Martin.)

Q. That is your signature and Mrs. Martin's?

A. That is my signature and that is my wife's signature, yes.

Mr. KEIGWIN.—We offer this deed, being a deed dated on the 6th of December, 1904.

(Marked Plaintiff's Exhibit No. 309M.)

Mr. BUNDY.—We object to the introduction of any evidence relative to the timber and stone claim of Ella L. Martin, for the same reason as the others.

Mr. KEIGWIN.—December 6, 1904, from Frank Martin and Ella L. Martin, his wife, to the Barber Lumber Company, for a consideration of \$1900, conveying the north half of the northeast quarter and the north half of the northwest quarter of section 10, township 6 north, range 4 east; also the northwest quarter of the northeast quarter of section 27; and the west half of the southeast quarter, and the northeast quarter of the southeast quarter of section 22, township 6 north, range 4 east, Boise Meridian.

Mr. GORDON.—Q. Mr. Martin, I understood you to say that that deed conveyed the property that you and your wife entered under the Timber and Stone Act.

A. Yes, I presume it did; I didn't look at the description of the land; but I took a timber entry, and my wife took a timber entry, and we conveyed those two entries to the Barber Lumber Company, and that is my signature and her signature, and that is the only deed—no, we made a later deed, not to the same land, however.

Mr. KEIGWIN.—Q. Do you know whether

(Testimony of Frank Martin.)

Mrs. Martin made her entry before or after yours?

A. The same day—she filed her application the same day I did, and we made our proof on the same day, if I remember.

Mr. BUNDY.—Have you the final proof papers of Mrs. Martin?

Mr. KEIGWIN.—No, not Mrs. Martin.

Mr. BUNDY.—Then I object to any evidence relative to the date of final proof of Ella L. Martin, as not the best evidence.

The WITNESS.—There might have been a day's difference in our proof; I don't think there was; but if I remember, they were very near the same day—maybe she made hers the day after or the day before mine, but they were right together.

Mr. KEIGWIN.—Mr. Martin, in your testimony the other day I think you spoke about some relinquishments having been secured by you and Mr. Wells from Arthur Anderson, Albert Nugent, James T. Ball, Edward Abel Hunter, in connection with the contest brought by the United States against their entries. Do you remember the form in which those relinquishments were taken?

A. We had no relinquishment from Nugent, but from the others that you named.

Q. I said Nugent when I ought to have said Harvey Wells.

A. Just the ordinary form of relinquishment: I hereby relinquish to the Government of the United States the following described lands—then describing them, entry number so and so, as I remember

(Testimony of Frank Martin.)

them.

Q. Mr. Martin, if you will think, would you not find that that was rather a waiver of their right to ask for a review before the Secretary of the Interior?

A. I think it also contained a waiver; I think I have a copy in my office perhaps of the form that those were taken in; I think, as I remember it, that the relinquishment also contained a waiver of the right to apply for a review.

Q. At the time those papers were taken, there had been a decision of the Secretary of the Interior against the entries, so it occurred to me that they were probably not relinquishments in the usual form, but waivers of the right to move for a rehearing.

A. No; they contained a relinquishment in the ordinary form, and probably written at the last of that was a waiver of the right to move—the main idea in getting those was to end the proceedings and get the money back.

Q. To get the immediate cancellation of the entry without waiting for the review?

A. Yes, and get the money back.

Q. Do you know Mr. Lorenzo Martin?

A. Lorenzo D. Martin?

Q. Yes. A. Yes.

Q. Is he a relative of yours?

A. He is a nephew—my brother's son.

Q. A son of Thomas B. Martin? A. Yes.

Q. Is Mrs. Bertha Martin the wife of your nephew, Thomas L. Martin? A. Yes.

(Testimony of Frank Martin.)

Q. Thomas L. Martin is a son of Thomas B. Martin?
A. Yes.

Q. Mr. Martin, I show you here a paper which has been somewhat torn, but seems to be all there, purporting to be a document executed by James T. Ball, and intended for use in the contest against the timber and stone land entry of Mr. Ball, and ask you if that is the document which you characterized as a relinquishment, in your testimony the other day.

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial, for the reason that no lands entered by James T. Ball are involved in this action.

A. Yes, this, I think, is the paper that James T. Ball, and one of the papers I referred to as relinquishments.

Mr. KEIGWIN.—Q. And the others were all in the same form?

A. Yes, the others were all in the same form.

Mr. KEIGWIN.—We offer this relinquishment and waiver of right, executed by James T. Ball.

(Marked Plaintiff's Exhibit No. 309N.)

Mr. BUNDY.—We object to the paper offered in evidence as a relinquishment of James T. Ball, as incompetent, irrelevant and immaterial.

Mr. KEIGWIN.—We read this into the record as follows:

(Testimony of Frank Martin.)

“UNITED STATES LAND OFFICE, BOISE
CITY, IDAHO.

UNITED STATES

vs.

JAMES T. BALL.

Involving Timber and Stone Sworn Statement,
No. 228, for the SW. $\frac{1}{4}$ of Section 13, Twp. 7 North
of Range 5 East, B. M.

The officers of the above-entitled land office, having rejected the final proof offered by defendant on said application, after a hearing, and having ordered said application to enter, rejected and cancelled, and such proceedings having been had in said case, that the Honorable Secretary of the Interior has finally sustained said decision, and ordered said proof rejected, and said entry cancelled, and having received notice of said decision, and further notice that thirty days will be given in which to apply for a rehearing or review of said decision:

Therefore, I, James T. Ball, of Centerville, Boise County, Idaho, said applicant to purchase, and the defendant in said case, hereby waive my right to apply for a rehearing in this case, and for a review of said decision of the Honorable Secretary of the Interior, and relinquish to the Government of the United States all right or claim I may have on account of said application to purchase to the above-described land.

JAS. T. BALL.

Signed, sealed and delivered in the presence of.

NORMAN H. YOUNG.

(Testimony of Frank Martin.)

State of Idaho,

County of Boise,—ss.

On this 21st day of June in the year 1905, before me, Norman H. Young, a Notary Public in and for said County, personally appeared James T. Ball, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[Notarial Seal] NORMAN H. YOUNG,
Notary Public."

Q. The other relinquishments, Mr. Martin, were in the same form, and taken at the same time?

A. They were all taken at the same time, as I remember, and in the same form.

Mr. GORDON.—Q. Mr. Martin, I understood you to say that Ella L. Martin was your wife?

A. Yes.

Q. And that she took up a claim under the Timber and Stone Act the same day you did?

A. Yes.

Q. I show you timber and stone land sworn statement of Ella L. Martin, dated September 21, 1903, and ask you if that is signed by your wife, Ella L. Martin? A. It is.

Q. I show you the testimony taken on final proof in the land office, of Ella L. Martin, dated January 6, 1904, and ask you if that is the signature of Mrs. Ella L. Martin?

(Testimony of Frank Martin.)

A. That is the signature of Mrs. Ella L. Martin.

Q. And they were filed in the land office at the time yours were?

A. Yes, as I remember, the same day. Let's see the date of that (witness looks at paper): January 6th, I think that is the same date as mine.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Ella L. Martin, and the testimony of Ella L. Martin given on final proof, just identified by the witness, and the receiver's receipt and the register's certificate, dated January 6th, 1904, all to the northwest quarter of the northeast quarter of section 27, and the west half of the southeast quarter, and the northeast quarter of the southeast quarter of section 22, township 6 north, range 4 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 310A to 310M, inclusive.)

Mr. BUNDY.—We object as incompetent, irrelevant, and immaterial, for the reason that the lands embraced in said entry papers are not involved in this action, and we object to the final proof papers as incompetent, irrelevant and immaterial.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Martin, did you tend to the business portion of your wife's entry, so far as preparing the papers, selling, and so forth, were concerned?

A. Yes.

Q. Did you or your wife make the entries referred to at the request or solicitation of the defend-

(Testimony of Frank Martin.)

ant, or any of the defendants in this action?

A. No, I did not, and my wife did not.

Q. Did you, at the time of making your entry, or at the time of making your final proof, have any arrangement or agreement, express or implied, in writing or oral, direct or indirect, with the defendants, or any of them, by which the defendants, or any other person, firm, or corporation had acquired any right, title, or interest in the lands you were acquiring or the timber on that land?

A. No, sir.

Q. Were you induced, persuaded, or requested by the defendants, or any of them, or any person for them, to make these entries? A. No.

Q. Did you testify honestly and truthfully before the land office at the time of making the entry, and at the time of making final proof? A. I did.

(Witness excused.)

At this time an adjournment was taken until two o'clock, at which time, pursuant to adjournment, the taking of testimony was resumed, the Examiner and counsel being present, and the following proceedings were had, to wit:

[Testimony of William Balderston, on Behalf of the Complainant (Recalled).]

WILLIAM BALDERSTON, recalled by complainant, testified as follows:

Direct Examination.

(By Mr. KEIGWIN.)

Q. Mr. Balderston, do you recognize the book

(Testimony of William Balderston.)

which is placed before you as being a book from the files of the local land office, called the register of entries?

A. Register of timber and stone entries.

Q. And in that the applications which are made under the Timber and Stone Land Act are entered in the order in which they are offered, are they not?

A. Yes.

Q. And the entries show the dates of the respective applications, and in some cases the dates of the final proof, do they not?

A. In some cases.

Q. And the number of the application and the number of the entry?

A. The number of the application, and in some cases at least the number of the final entry.

Q. Now, Mr. Balderston, will you turn to the entries beginning on the 20th day of September, 1901, in that book, and you find there the applications of John I. Wells, Jennie E. Wells, Homer Granger, and Mrs. Granger? A. Yes.

Q. Will you run down the column as it follows from that, Mr. Balderston, and note any timber land applications which you find made for lands in any of these townships, in township 6 north, ranges 4, 5, 6, 7 and 8 east; 7 north, ranges 4, 5, 6, 7, and 8 east, and 8 north, 5 east.

A. Following these?

Q. Beginning with those.

A. What do you wish me to give?

(Testimony of William Balderston.)

Mr. GORDON.—The number, the date, and the name.

A. Number 219, September 20, 1901, John I. Wells.

Q. Will you read the description of that.

A. Northwest quarter of section 14, 7 north, 5 east.

Mr. KEIGWIN.—What is the next, Mr. Balderston?

Mr. GORDON.—Q. One minute. Before you proceed any further with that, Mr. Balderston, I desire to ask you if you have looked at the records of your office with the view of testifying whether or not patent has been issued to John I. Wells on that entry? A. Yes, I have.

Q. Has patent been issued, according to your records?

A. My records don't show that it was overissued.

Q. Proceed.

Mr. KEIGWIN.—Q. Will you read the next timber land application.

A. 220, September 20, 1901, Homer C. Granger, the northeast quarter of section 14, I suppose that is 7 north, 5 east—there has been a red ink change in it there. 221, September 20, 1901, Jennie E. Wells, the southwest quarter of section 12, 7 north, 5 east. 222, September 20, 1901, Belle Granger, the southeast quarter of section 11, 7 north, 5 east.

Q. We will not ask for any further descriptions.

A. The next is a rejected one. Do you want that?

Mr. GORDON.—Yes.

(Testimony of William Balderston.)

A. 224, September 24, 1901, Harvey H. Wells.

Q. Rejected, you say? A. Yes.

Q. When?

A. It doesn't show here—some time in 1905, apparently.

Mr. BUNDY.—What was the date of the entry?

A. September 24, 1901.

Mr. BUNDY.—Don't the book show that Jennie E. Wells and Belle Granger were also rejected?

A. This book doesn't show it here.

Mr. BUNDY.—You know that to be a fact, don't you?

A. I don't know; I couldn't testify whether it is a fact or not.

Mr. BUNDY.—We object to the introduction of evidence relating to the claim of John I. Wells, Jennie E. Wells, and Belle Granger, for the reason that the lands mentioned in their entries are not involved in this action.

The WITNESS.—The next is a cancelled entry, apparently. 225, September 24, 1901, Albert P. Nugent. 226, Septemebre 24, 1901, Arthur Anderson.

Mr. GORDON.—Q. Is that rejected, too?

A. That is rejected. 227, September 25, 1901, Abel E. Hunter; that is also rejected. 228, September 25, 1901, James T. Ball; that is also rejected.

Q. Well, now, let me ask you to read the description of Abel E. Hunter's claim, and also of James T. Ball's.

A. The Hunter claim, the southeast quarter of section 14, 7 north, 5 east; the Ball claim, the south-

(Testimony of William Balderston.)

west quarter of section 13, 7 north, 5 east. The next is 232, October 1, 1901, Thaddeus M. Glass. 237, October 5, 1901, Kate Hunter. 238, October 9, 1901, Michael Hoppas. 239, October 9, 1901, George M. Cutler. 240, October 19, 1901, Nellie J. Thompson.

Mr. BUNDY.—I object to this as incompetent, irrelevant, immaterial, not proper rebuttal, and not embraced in the stipulation with reference to rebuttal. We specifically object to all timber and stone entries not involved in this action as incompetent, irrelevant, and immaterial.

Mr. GORDON.—Proceed, Mr. Balderston.

A. 241, October 19, 1901, Frank B. Nickerson. 246, October 21, 1901, John Bates. 247, October 26, 1901, Samuel Dye.

Mr. BUNDY.—Isn't that shown as a rejected claim? A. It doesn't show here.

Mr. BUNDY.—You know, as a matter of fact, that it was, don't you?

A. No, I don't know. 248, October 26, 1901, Dean West. 249, October 26, 1901, John J. Keane. 250, October 26, 1901, Oral Dye. 251, October 26, 1901, Joseph M. Hollister. 252, October 26, 1901, Leonora Hollister. 256, October 29, 1901, Charles W. Balantine. 257, October 30, 1901, Lewis K. Folsom. 258, October 30, 1901, William W. Abrams. 259, October 31, 1901, Harry L. Clyne. 260, November 1, 1901, Charles Nelson. 261, November 1, 1901, Lewis Nibler. 262, November 1, 1901, Louisa B. West. 263, November 1, 1901, Gustave A. Link. 264, November 1, 1901, Mary Link. 270, November

(Testimony of William Balderston.)

8, 1901, William Gross. 273, November 18, 1901, Harry A. Partridge.

Mr. GORDON.—One moment. The entry of William Gross—was proof ever made in that?

A. There is nothing on this book to show whether it was or not.

Q. Doesn't it show on that book that proof hadn't been made at that time?

A. Presumably it would; the book doesn't show whether it was or not.

Q. What does it show about the Partridge entry?

A. That shows cash entry, cash certificate, 274, November 26, 1901, Walter L. Harrison.

276, November 26, 1901, William Pearson.

277, November 26, 1901, Henry F. Benedix.

278, November 26, 1901, Lewis K. Burns.

279, November 26, 1901, Gustave H. Rothine.

280, November 27, 1901, Evelyn O'Farrell.

286, December 7, 1901, Charles A. Walker.

287, December 7, 1901, Samuel Greig.

288, December 7, 1901, Sarah Greig.

289, December 7, 1901, Margaret Pearson.

294, December 19, 1901, Lelia Lee.

295, December 19, 1901, Ida M. Briggs.

296, December 19, 1901, Dora C. Burns.

297, December 19, 1901, John W. Cassell.

Mr. GORDON.—John W. or U?

A. I couldn't say; it doesn't look much like a U.

298, December 19, 1901, John R. Gary.

299, December 20, 1901, Samuel W. Swan.

300, December 19, 1901, Emma Swan.

(Testimony of William Balderston.)

301, December 21, 1901, Uriah Flint.

303, December 23, 1901, Uriah F. McBurney.

304, December 24, 1901, Lettie L. Stevenson.

305, December 24, 1901, Martin S. Stevenson.

306, December 24, 1901, James O. Baker.

307, December 24, 1901, William F. Roberts.

308, December 26, 1901, Wilbert F. Wilmot.

309, December 26, 1901, Alexander J. Rowan.

310, December 26, 1901, William J. Wills.

Mr. GORDON.—Q. Will you read the description of that?

A. South half of the northwest quarter, north half of the southwest quarter, section 33, 8 north, 5 east.

311, December 26, 1901, Mary Wills.

Q. Read the description of that also.

A. East half of the southwest quarter, the southeast quarter of the northwest quarter, lot 3, section 1, 7 north, 5 east.

312, December 26, 1901, Mack Gillum.

313, December 26, 1901, Altha Gillum.

314, December 26, 1901, Henry Rics.

315, December 31, 1901, John C. Monroe.

Q. Was that rejected?

A. Perhaps it was; there is a note here, lead pencil note—I guess it was.

Mr. BUNDY.—What does it say?

A. Rejected and case closed by P., October, 1906.

Mr. BUNDY.—That was after patent was issued. I don't know what that means. I wish you would look that up and see if you can find out what that

(Testimony of William Balderston.)

is.

Mr. KEIGWIN.—I think we put in the patent.

The WITNESS.—It is just possible that that refers to an entry on the other page—it very likely does, because the final receipt was never issued on that.

Mr. BUNDY.—Whose is it?

A. That was Oscar Heed; that was in 8 north, 2 east.

316, December 31, 1901, Charles M. Wilmot.

317, January 7, 1902, Mary A. Monroe.

320, January 14, 1902, Arthur E. Brookhart.

321, January 22, 1902, Norman H. Young.

322, January 22, 1902, John Kinkaid.

Mr. GORDON.—Please read that description.

A. Southeast quarter of section 7, 6 north, 5 east.

324, February 1, 1902, Robert S. Poole.

325, February 7, 1902, Patrick Sheridan.

326, March 3, 1902, John J. Tucker.

Mr. GORDON.—Was that cancelled?

A. Apparently cancelled, yes.

328, March 17, 1902, Samuel C. Bowen.

329, March 21, 1902, George H. Ensworth.

330, March 21, 1902, Louis M. Pritchard.

331, March 22, 1902, Homer G. Allen.

332, March 22, 1902, Ery A. Wilmot.

333, March 22, 1902, Samuel Marcum.

337, March 24, 1902, Daniel P. Woodmore.

338, March 25, 1902, George G. Gibson.

339, March 25, 1902, Willis C. Lane.

340, March 25, 1902, William Judge.

(Testimony of William Balderston.)

341, March 25, 1902, Sedgwick Hoover.

342, March 26, 1902, Frederick Thurman.

Mr. GORDON.—Read the description of that.

A. The northeast quarter of section 20, 6 north, 6 east.

343, March 26, 1902, Lola T. Thurman.

344, March 26, 1902, John D. French.

345, March 26, 1902, Joseph French.

346, March 26, 1902, Adella Brockhart.

347, March 28, 1902, Charley Patterson.

348, March 28, 1902, Edward E. Butler.

349, March 28, 1902, Smith Barker.

350, March 28, 1902, William H. Lewin.

351, March 31, 1902, Jothan A. Lippincott.

352, April 5, 1902, Walter S. Walker.

353, April 5, 1902, Harry S. Worthman.

354, April 4, 1902, Frank Lane.

360, April 18, 1902, Edward Brisbin.

361, April 18, 1902, William J. Marcum.

362, April 18, 1902, John H. Byre.

363, April 18, 1902, Carl J. Peterson.

368, April 29, 1902, John W. Williams.

369, April 29, 1902, Henry Humphrey.

370, April 29, 1902, Roy Dye.

371, April 29, 1902, Gertrude Lewin.

376, May 3, 1902, Charles H. Arbuckle.

378, May 3, 1902, Susan H. Arbuckle.

383, May 5, 1902, Henry T. James.

390, May 4, 1902, John G. McDonald.

409, May 31, 1902, Alfred E. Anderson.

Q. Was any proof made there?

(Testimony of William Balderston.)

A. There is no indication that proof was made here, no sign that proof was made.

Mr. BUNDY.—Does that indicate that it hasn't been?

A. Yes, that would indicate rather strongly that it hadn't been made, for the practice was to note the cash entry number given; I sometimes found that notations hadn't been made, and I never feel certain without checking it up.

437, June 18, 1902, Charles H. Pratt.

496, August 11, 1902, Albert B. Ewing.

497, August 11, 1902, Clara B. Ewing.

498, August 11, 1902, Lydia H. Humphrey.

499, August 11, 1902, William H. Humphrey.

500, August 11, 1902, George S. Warren.

501, August 12, 1902, Jennie E. Thompson.

503, August 12, 1902, Robert E. Heel.

508, August 15, 1902, William S. Cole.

Mr. GORDON.—Was any proof made there?

A. It doesn't indicate it.

521, August 27, 1902, Jens Olsen.

522, August 27, 1902, John Christenson.

523, August 27, 1902, Howard Elliott.

Mr. GORDON.—Any proof made there?

A. It doesn't indicate it.

524, August 27, 1902, Emma P. Elliott.

Mr. GORDON.—Proof made there?

A. No, it isn't indicated there; it doesn't indicate that any proof was made.

526, August 29, 1902, John A. Youngkin.

527, August 29, 1902, William H. Gibberd.

(Testimony of William Balderston.)

- 533, August 29, 1902, Elof Anderson.
- 534, August 29, 1902, Emma M. Anderson.
- 540, August 30, 1902, Jackson Ownbey.
- 541, August 30, 1902, Mary E. Ownbey.
- 542, August 30, 1902, Jane Ownbey.
- 543, August 30, 1902, Harrison Ownbey.
- 548, September 4, 1902, Bert T. Parker.
- 549, September 4, 1902, Thomas F. Kelley.
- 550, September 4, 1902, William F. Cavanaugh.
- 557, September 6, 1902, Edward H. Starn.
- 558, September 6, 1902, Aaron Ownbey.
- 559, September 8, 1902, Mrs. Mary Starn.
- 563, September 8, 1902, Addie G. Gibberd.
- 564, September 8, 1902, Susia A. Youngkin.
- 570, September 9, 1902, Fannie R. Hart.
- 571, September 9, 1902, Irving W. Hart.
- 574, September 11, 1902, Charles S. Kingsley.
- 575, September 11, 1902, Caro F. B. Kingsley.
- 578, September 13, 1902, Merrit L. Twogood.
- 579, September 15, 1902, Alice Fordney.
- 580, September 15, 1902, Ida Twogood.
- 581, September 15, 1902, Louisa E. Butler.
- 582, September 15, 1902, Elvie M. Butler.
- 583, September 15, 1902, Eva Hunt Dockery.
- 584, September 15, 1902, Edward J. Dockery.
- 585, September 15, 1902, Alfred Bayhouse.
- 586, September 15, 1902, Henry Bayhouse.
- 587, September 15, 1902, Maud Pitman Neil.
- 588, September 15, 1902, John M. Neil.
- 589, September 16, 1902, Mary Thompson.
- 590, September 16, 1902, Thomas S. Thompson.

(Testimony of William Balderston.)

Mr. GORDON.—Was proof made on that?

A. No, it doesn't indicate proof on that.

591, September 16, 1902, Andrew Hanson.

592, September 16, 1902, John W. Rose.

593, September 16, 1902, Frank R. McDonald.

594, September 16, 1902, Clifton C. Bliven.

606, September 19, 1902, Harry K. Eagleson.

607, September 19, 1902, Charles H. Eagleson.

608, September 19, 1902, Emerson S. Sensenig.

609, September 19, 1902, Jacob V. Nusbaum.

610, September 19, 1902, Benjamin C. Eagleson.

611, September 19, 1902, George T. Ellis.

613, September 23, 1902, Walter Joplin.

614, September 23, 1902, George W. Butler.

616, September 24, 1902, Edgar E. Bush.

621, September 24, 1902, Frank Bayhouse.

622, September 24, 1902, George Bayhouse.

623, September 24, 1902, Mrs. Delilah Bayhouse.

624, September 24, 1902, Emma Bilderback.

625, September 24, 1902, General F. Willhite.

626, September 24, 1902, Elizabeth Willhite.

627, September 25, 1902, William F. Noble.

628, September 25, 1902, Oliver Johnson.

629, September 26, 1902, James F. Belk.

634, September 29, 1902, Benjamin E. Stahl.

635, September 29, 1902, Arietta H. Stahl.

636, September 29, 1902, Henrietta B. Martin.

637, September 29, 1902, William H. Martin.

640, October 3, 1902, Elma E. Gardner.

641, October 2, 1902, Andrew F. Joplin.

645, October 2, 1902, Sanora A. Joplin.

(Testimony of William Balderston.)

- 646, October 2, 1902, Lena D. Wilson.
- 647, October 2, 1902, Walter L. Wilson.
- 648, October 3, 1902, Emma Lou Blandford.
- 649, October 3, 1902, Samuel M. Blandford.
- 650, September 30, 1902, Mantie Beckley.
- 651, October 3, 1902, Elizabeth Schmelzel.
- 652, October 3, 1902, Charles R. Beckley.
- 654, October 7, 1902, Helen E. Eagleson.
- 655, October 7, 1902, Pearl I. Nusbaum.
- 656, October 7, 1902, Lucretia C. Sensenig.
- 657, October 7, 1902, Caroline Alexander.
- 667, October 17, 1902, Jeanette B. Cooper.
- 668, October 17, 1902, Annie E. Kempner.
- 669, October 17, 1902, Moses H. Kempner.
- 681, November 5, 1902, David G. Thompson.
- 706, December 22, 1902, Albert A. Givens.
- 711, January 5, 1903, Silas P. Hagler.
- 745, February 12, 1903, Joseph Sullivan.
- 746, February 12, 1903, Helen Sullivan.
- 804, April 22, 1903, Frank P. Weasel.
- 805, April 22, 1903, George M. York.
- 857, May 29, 1902, Earl A. Harrington.
- 858, May 29, 1903, Rowan C. Lathrop.
- 860, May 29, 1903, Lee J. Roberts.
- 861, May 29, 1903, Adah Roberts.
- 862, May 29, 1903, Elmer G. Dodds.
- 863, May 29, 1903, Hannah Dodds.
- 936, July 6, 1903, Clinton C. Siggins.
- 937, July 6, 1903, Nellie Siggins.
- 941, July 10, 1903, Samuel S. Horner.
- 942, July 10, 1903, Hortense D. Horner.

(Testimony of William Balderston.)

943, July 10, 1903, Ada V. Austin.

944, July 10, 1903, Willard C. Austin.

945, July 10, 1903, Mattie J. Barber.

946, July 10, 1903, Ira E. Barber.

954, July 16, 1903, Leanah Ellis.

955, July 16, 1903, Norman E. Ellis.

956, July 16, 1903, William B. Ross.

961, July 20, 1903, John W. Daniels.

962, July 20, 1903, Luella Jaycox.

963, July 20, 1903, *July 20, 1903*, Orlin R. Jaycox.

970, July 27, 1903, John Carter.

971, July 24, 1903, Burt Resser.

978, July 24, 1903, Edward A. Lockhart.

983, August 3, 1903, Alice S. Daniels.

984, August 3, 1903, Emily O. Steward.

985, August 3, 1903, Mary S. Carter.

Q. Any proof made there?

A. No, no indication of proof.

986, August 4, 1903, Gustus D. Hoseley.

990, August 10, 1903, Benjamin R. Allen.

991, August 10, 1903, Hiram Maynard.

992, August 10, 1903, Samuel E. Vance.

993, August 10, 1903, John E. Hobbs.

994, August 10, 1903, John J. Pawley.

996, August 15, 1903, Mary H. Moxley.

997, August 15, 1903, Christina J. Diack.

998, August 15, 1903, Mary Carter.

999, August 15, 1903, Allie Nelson.

1000, August 15, 1903, Annie McCormick.

1001, August 15, 1903, George W. McCormick.

1002, August 15, 1903, Frank Nelson.

(Testimony of William Balderston.)

1011, August 22, 1903, William B. Horn.

1012, August 22, 1903, Louis W. Thrailkill.

1013, August 22, 1903, E. Edith Horn.

1014, August 22, 1903, John M. Burk.

1015, August 22, 1903, William M. Hutchinson.

1020, August 29, 1903, Jane Foster.

Q. Now look at entry 295, please.

A. Ida M. Briggs.

Q. When was the entry made there?

A. December 19, 1901.

Q. That is 295?

A. Yes, that entry was relinquished.

Q. It was relinquished when?

A. September 18, 1902.

Q. Filed when?

A. Filed, notation here relinquishment filed September 18, 1902.

Q. What is the description?

A. Lots 1 and 2, south half northeast quarter section 1, 7 north, 5 east.

Q. What is the date of final proof? It doesn't show?

Mr. BUNDY.—There wasn't any final proof.

A. They apparently never made it.

Mr. GORDON.—Q. Will you turn there to claim 1629, entry 1629.

A. 1629.

Q. What is the date of that?

A. February 21, 1902.

Q. Who made the entry there?

A. John G. Lietzke.

(Testimony of William Balderston.)

Q. Read that description, please.

A. East half of the northeast quarter of 15, south-east of the southeast of 10, southwest of the southwest of 11, all in 7 north, 5 east.

Q. Turn back to entry 203.

A. Henry A. Snow.

Q. That is 203? A. Yes.

Q. What is the date of the entry there?

A. August 17, 1901.

Mr. KEIGWIN.—Q. That is the date of the application?

A. The date of entry doesn't show here; proof was apparently offered October 14, 1902.

Mr. GORDON.—Q. What is the description?

A. South half of the southeast quarter, the south half of the southeast quarter of section 8, 7 north, 5 east.

Q. What is the next entry there, 204?

A. On the same date.

Q. August 17, 1901? A. Yes.

Q. What date was proof made?

A. July 26, 1902.

Q. Who made the entry?

A. Patrick H. Downs.

Q. What is the description?

A. North half of the northeast, north half of the northwest, 17, 7 north, 5 east.

Q. Will you look at the homestead book there a moment. What book is this, Mr. Balderston, here before you?

(Testimony of William Balderston.)

A. That is a book of original homestead applications.

Q. I will ask you if you find a homestead entry in that book under the name of Henry A. Snow?

A. Yes.

Q. Entry number what?

A. 5379 was the homestead application.

Q. And what was the date of that application?

A. August 28, 1901.

Q. What is the description?

A. South half of the southeast quarter, northeast quarter of the southeast quarter, southeast quarter of the northeast quarter, section 17, 7 north, 5 east.

Mr. BUNDY.—Defendant objects and moves to strike out all evidence relative to the homestead entry of Henry A. Snow, or any other person, for the reason that such are not involved in this action.

Mr. GORDON.—Q. That was the entry of Henry A. Snow? A. Yes.

Q. What does the record show as to what was done with that claim?

A. There was a contest here, and finally was cancelled, relinquished on March 7, 1905.

Q. What is the next entry there, 5380, when was that made? A. August 28, 1901.

Q. By whom? A. Patrick H. Downs.

Q. What is the description?

A. The west half of the southwest quarter, the west half of the northwest quarter, section 8, 7 north, 5 east.

Mr. BUNDY.—Same objection with reference to

(Testimony of William Balderston.)

the homestead entry of Patrick H. Downs.

Mr. GORDON.—Q. What became of that?

A. That was relinquished on November 1, 1901.

Mr. KEIGWIN.—Mr. Balderston, you have here a bound volume containing letters addressed by the Commissioner of the General Land Office to the register and receiver at Boise, have you?

A. I have.

Q. Will you look at four letters under date of September 6, 1905; do you find there a letter entitled United States against James T. Ball?

A. I do.

Q. And that letter is found in this bound volume and is a part of the records of the local land office?

A. It is.

Q. Do you find another letter of the same date, entitled United States against Arthur Anderson?

A. Yes, sir.

Q. And of the same character?

A. Yes, sir.

Q. Another of the same date, entitled United States against Harvey H. Wells, of the same character? A. Yes, sir.

A. Another entitled United States against Abel Edward Hunter, of the same character?

A. Yes.

Mr. KEIGWIN.—We offer those four letters in evidence and ask that they be transcribed into the record.

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial, complainant offering in evi-

(Testimony of William Balderston.)

dence statements made by its own officers relative to lands not involved in this action.

“ ‘P’

W.B.P.

152 DEPARTMENT OF THE INTERIOR,

General Land Office,

W.B.P.

Washington, D. C.

September 6, 1905.

Address only the Commissioner of the General Land Office.

UNITED STATES

WJM vs.

JAMES T. BALL.

In re application No. 228 to make timber and stone cash entry of the SW. $\frac{1}{4}$ Sec. 13, T. 7 N., R. 5 E., B. M.

Register and Receiver,

Boise, Idaho,

Gentlemen:

Referring to the previous record in this case, and especially to office letter ‘P’ of June 3, 1905, promulgating the decision of the Honorable Secretary of the Interior, rendered May 24, 1905, by which the decision of this office of November 19, 1904, holding the above described application for rejection, was affirmed, and appellant’s appeal dismissed, this office now has your letter of August 10, 1905, transmitting the written waiver by James T. Ball of his right to file a motion for a review of said Departmental decision, and expressly disclaiming any purpose or

(Testimony of William Balderston.)

desire to prosecute such a motion.

Said Departmental decision has, therefore, become final, and the case is hereby formally closed. You will so note on the records of your office. Advise the applicant hereof.

Very respectfully,

J. H. FIMPLE

M.L.A.

Acting Commissioner."

" 'P'

W.B.P. DEPARTMENT OF THE INTERIOR.

308

General Land Office,

W.B.P.

Washington, D. C.

Sept. 6, 1905.

Address only the Commissioner of the General Land Office.

UNITED STATES

WJM

vs.

ARTHUR ANDERSON.

In re application to make timber and stone cash entry of E. $\frac{1}{2}$ NW. $\frac{1}{4}$, and W. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 15, T. 7 N., R. 5 E., B. M.

Register and Receiver,
Boise Idaho,

Gentlemen:

Referring to the previous record in this case, and especially to office letter 'P' of June 3, 1905, promulgating the decision of the Honorable Secretary of the Interior, rendered May 24, 1905, by

(Testimony of William Balderston.)

which the decision of this office of November 19, 1904, holding the above-described application for rejection, was affirmed, and appellant's appeal dismissed, this office now has your letter of August 10, 1905, transmitting the written waiver by Arthur Anderson of his right to file a motion for a review of said Departmental decision, and expressly disclaiming any purpose or desire to prosecute such a motion.

Said Departmental decision has, therefore, become final, and the case is hereby formally closed. You will so note on the records of your office. Advise the applicant hereof.

Very respectfully,

J. H. FIMPLE,

MLA

Acting Commissioner."

" 'P'

W.B.P. DEPARTMENT OF THE INTERIOR.

149

General Land Office,

W.B.P.

Washington, D. C.

Sept. 6, 1905.

Address only the Commissioner of the General Land Office.

(Testimony of William Balderston.)

UNITED STATES

W. J. M.

vs.

HARVEY H. WELLS.

In re application No. 224 to make timber and stone
cash entry of the SW. $\frac{1}{4}$, Sec. 14, T. 7 N/, R. 5

E., B. M.

Register and Receiver,

Boise, Idaho,

Gentlemen:

Referring to the previous proceedings in the above-entitled case, and especially to office letter 'P' of June 3, 1905, promulgating the Decision of the Honorable the Secretary of the Interior, rendered May 24, 1905, by which the decision of the office of date November 19, 1904, holding the above-described application for rejection, was affirmed, and appellant's appeal dismissed, this office now has your letter of August 10, 1905, transmitting a formal written waiver by the said Harvey H. Wells of his right to file a motion for a review of said Departmental decision, and expressly disclaiming any purpose or desire to prosecute such a motion, said writing having been filed in your office on June 28, 1905.

Said Departmental decision has, therefore, now become final, and the case is duly closed. You will so note on the records of your office.

The application of Harvey H. Wells for repayment of the purchase money deposited on account of his said application will form the subject of a sepa-

3314 *The United States of America*

(Testimony of William Balderston.)

rate letter. Advise the applicant hereof.

Very respectfully,

J. H. FIMPLE,

M.L.A.

Acting Commissioner."

" 'P'

W. B. P. DEPARTMENT OF THE INTERIOR.

324 General Land Office,

W.B.P. Washington, D. C.

September 6, 1905.

Address only the Commissioner of the General Land
Office.

UNITED STATES

W.J.M.

vs.

ABLE EDWARD HUNTER.

In re application No. 227 to make timber and stone
cash entry of SE. $\frac{1}{4}$, Sec. 14, T. 7 N., R. 5 E.,
B. M.

Register and Receiver,
Boise, Idaho.

Gentlemen:—

Referring to the previous record in this case,
and especially to office letter 'P' of June 3, 1905,
promulgating the decision of the Honorable Sec-
retary of the Interior, rendered May 24, 1905, by
which the decision of this office of November 19, 1904,
holding the above-described application for rejec-
tion, was affirmed, and appellant's appeal dismissed,
this office now has your letter of August 10, 1905,

(Testimony of William Balderston.)

transmitting the written waiver by Able Edward Hunter of his right to file a motion for a review of said Departmental decision, and expressly disclaiming any purpose or desire to prosecute such a motion.

Said Departmental decision has, therefore, become final, and the case is hereby formally closed. You will so note on the records of your office. Advise the applicant hereof.

Very respectfully,

J. H. FIMPLE,

M. L. A. Acting Commissioner."

Cross-examination.

By Mr. BUNDY.—Mr. Balderston, you were asked to, and read, a long list of timber and stone entries, beginning with number 219, John I. Wells, dated September 20, 1901. Now the first 218 entries made in the land office at Boise were made prior to that time, were they not, prior to September 20, 1901?

A. Yes, those were entered serially as they came in.

Q. And those entries began as early as 1892, did they not?

A. Yes, whatever they are dated there.

Q. And a large number of entries prior to September 20, 1901, to which your attention was called, are made in the townships and ranges embraced in the question, are they not?

A. I would have to examine it to see.

Q. I call your attention to the entry of—

(Testimony of William Balderston.)

A. There are a number on that page.

Q. That is page 12 of this book. And a number of them on page 11 are prior to that date?

A. There are two on that page.

Q. And that page begins with July, 1901?

A. That page begins with August, 1901.

Q. Timber and stone entries—find any on page 9?

A. No, I don't find any.

Q. Or on 8? A. No.

Q. Or on 7? A. None on 7.

Q. Or on 6? A. None on 6.

Q. 5? A. There is one on 5.

Mr. GORDON.—What is the number of that?

A. Number 61.

Mr. KEIGWIN.—What is the date of it?

Mr. BUNDY.—June 18, 1900.

The WITNESS.—Here is one, entry number 52, made on May 2, 1900, which is in 6 north, 5 east.

Mr. BUNDY.—By Charles W. Gartner.

Mr. GORDON.—When was that made?

Mr. BUNDY.—July 19, 1900.

The WITNESS,—I was speaking of this one here, Winters; Gartner made this one in 6 north, 6 east.

Mr. GORDON.—Winters never made any proof, did he?

A. It doesn't show here; Winters made his entry in May, 1900, and he got a cash certificate.

Mr. GORDON.—Who?

A. Gartner. Number 35, made January 19, 1900, by Walter F. Hyatt—that went to final certificate.

Mr. GORDON.—What was the description of

(Testimony of William Balderston.)
that?

A. That was the northwest of the northeast, the northeast of the northwest, section 24, 7 north, 4 east.

Mr. BUNDY.—We offer in evidence, as a part of the cross-examination of Mr. Balderston, the first sixty pages of book called Timber and Stone Original Filings, which has been produced in court. I don't care about it being read into the record; we can use it in the argument.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. Mr. Balderston, how many timber and stone land entries do you find in the townships mentioned by you prior to September 20, 1901?

A. I should judge, from a hasty looking over, that fifteen, or such a matter, twelve or fifteen—I didn't count them.

Mr. KEIGWIN.—That was from 1892 to 1901?

Mr. BUNDY.—The earliest one was 1900.

(Witness excused.)

[Testimony of Lewis S. Dille, on Behalf of the Complainant.]

LEWIS S. DILLE, produced as a witness for complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. What is your name, Mr. Dille?

A. Lewis S. Dille.

Q. And what is your occupation now?

(Testimony of Lewis S. Dille.)

A. I am bank cashier.

Q. What bank?

A. Western National of Caldwell.

Q. And you reside at Caldwell?

A. Yes, sir.

Q. How long have you been cashier of the institution you are now connected with?

A. About a year and two months.

Q. What was your occupation in 1900, 1901, 1902, 1903, 1904, and 1905?

A. I was assistant cashier of the Commercial Bank, and cashier of the Caldwell Banking & Trust Company.

Q. That was one institution by different names, wasn't it?

A. Yes, sir, that is, the Caldwell Banking & Trust Company took over the business of the Commercial Bank.

Q. Mr. Dille, I show you six books here, purporting to be the remittance books of the banks that you have just mentioned, the Caldwell Banking & Trust Company, and the Commercial Bank of Caldwell, and I will ask you if you recognize those books as being what are known as the remittance books of that bank while you were its assistant cashier?

A. Yes, sir.

Q. I will ask you to look at the first one of those books, at the date of February 28, 1902, and ask you if you find a remittance there of \$15,000, and explain that entry, if you find it.

A. February 28th?

(Testimony of Lewis S. Dille.)

Q. 1902.

A. Yes, on February 28, 1902, there was a remittance made to the National Bank of the Republic, Salt Lake City, an item of \$15,000.

Q. Who is it drawn on?

A. It was drawn on the Spokane & Eastern Trust Company, Spokane, Washington.

Q. By whom? A. By A. B. Campbell.

Q. And by whom was the paper endorsed?

A. Frank Steunenberg.

Q. And that item was paid, allowed?

Mr. BUNDY.—Paid?

Mr. GORDON.—Yes, paid. There is nothing on this entry here to show that it was paid, though it would show there if it hadn't been paid, wouldn't it?

A. No.

Q. Would it show on the ledger account of Frank Steunenberg that it had been paid? A. Yes.

Q. You know, as a matter of fact, that it was paid?

Mr. BUNDY.—I object to that.

A. Yes.

Q. Are these the loose ledger sheets, the original ledger account of Frank Steunenberg with the Caldwell Bank, Commercial Bank of Caldwell?

A. Yes, sir.

Q. I will ask you if you find that item there on or about the date February 28, 1902?

Mr. BUNDY.—He won't find it paid; he will find it credited to Frank Steunenberg's account.

A. Yes.

(Testimony of Lewis S. Dille.)

Mr. GORDON.—Q. That shows that Frank Steunenberg made a deposit to his credit in the bank February 28, 1902? A. Yes, sir.

Q. And that remittance entry that you have just read shows that whatever it was that was deposited by Frank Steunenberg was sent to that other bank for collection? A. Yes, sir.

Q. And if it hadn't been paid there would have been some entry of it in this ledger account here, would there not?

Mr. BUNDY.—There is the entry there all right.

A. Yes, sir, there would have been.

Mr. BUNDY.—And there is, isn't there, Mr. Dille?

Mr. GORDON.—One minute. I will ask him that. I will ask you to look at the remittance-book at the date of March 18, 1902.

Mr. BUNDY.—We object to all this evidence about the remittance-book of the Bank of Caldwell, as wholly incompetent, irrelevant and immaterial, and not binding upon this defendant.

Mr. GORDON.—They are the records of that bank, are they not?

A. Yes, sir.

Q. They are just as much a record of it as the ledger account? A. Yes, sir.

Q. I will ask you if you find a remittance in that book on March 13, 1902, for \$15,000?

A. Yes, sir.

Q. State what it was.

A. It was an item—

(Testimony of Lewis S. Dille.)

Mr. BUNDY.—The same objection.

A. (Continued.) It was an item drawn on the Spokane & Eastern Trust Company by A. B. Campbell, endorsed by Frank Steunenberg, for \$15,000.

Mr. GORDON.—Q. And that amount was placed to Frank Steunenberg's credit on the ledger accounts of that bank of that date? A. Yes, sir.

Mr. BUNDY.—I think he had better explain that that \$15,000 was never paid, and was charged back, which is a fact, is it not?

Mr. GORDON.—Do you have any recollection or know anything about that, Mr. Dille?

A. No, sir, it is possible, in fact it is probable from these entries here that that \$15,000 item was for some reason returned and again issued; it is practically the same item; I notice the number is the same here; it is probably the same item returned.

Q. Is it the same number paper for the same amount, or what?

A. The number—the description of the two items is exactly identical; the number is the same.

Mr. BUNDY.—If Mr. Dille can testify that the first one was not paid and was charged back, all right; otherwise I want you to bring in the rest of the bank-books here and establish that. I move to strike it all out unless the bank records are produced here, unless the witness can testify.

Mr. GORDON.—Q. Mr. Dille, I will ask you to look at that book and see if you find an item there, April 14, 1902, \$5800. A. Yes, sir.

Q. Read what that item is.

(Testimony of Lewis S. Dille.)

A. On April 14, 1902, there was an item of \$5800 sent to the Exchange National Bank of Spokane, Washington, drawn on that bank by A. E. Palmer, and made payable to F. Steunenbergh.

Q. And that amount was entered to the credit of Frank Steunenbergh in his ledger account with that bank of that date? A. Yes, sir.

Q. I will ask you if you find an item in that remittance-book, June 27, 1902, for \$5000.

A. Yes, sir.

Q. Read what that item is.

A. On June 27th there was sent to the National Bank of the Republic, at Salt Lake City, an item drawn by A. E. Palmer on the Exchange National Bank of Spokane, payable to Frank Steunenbergh, \$5000.

Q. And on that date was that amount placed to the credit of Frank Steunenbergh with the Caldwell bank? A. Yes, sir.

Q. I will ask you to look at June 27, 1902, in that remittance-book, Mr. Dille, and do you find an item there for \$5000? A. Yes, sir.

Q. Read what that is.

A. An item sent to the National Bank of the Republic, Salt Lake, drawn by A. E. Palmer on the Exchange National Bank of Spokane, in favor of Frank Steunenbergh, for \$5,000.

Q. And is that amount entered to Steunenbergh's credit of that date? A. Yes, sir.

Q. I will ask you to look at item of July 2, 1902.

A. July 2, 1902, there was a \$5,000 item sent to

(Testimony of Lewis S. Dille.)

the Exchange National Bank of Spokane, signed by A. E. Palmer, and made payable to Frank Steunenberg.

Q. And that is for \$5,000, and that amount is placed to the credit of Frank Steunenberg in the bank, of that date? A. Yes, sir.

Q. July 9th, 1902, there was an item drawn by A. E. Palmer on the Exchange National Bank of Spokane, Washington, and indorsed by Frank Steunenberg, sent direct to the Exchange National Bank of Spokane, and that amount was placed to Frank Steunenberg's credit with his bank of that date?

A. No; on July 9th it was sent to the National Bank of the Republic.

Q. What date was it entered in his bank as a credit? A. On July 9, 1902.

Q. Now, on July 23, 1902—

A. July 23, 1902.

Q. What do you find there?

A. There was one check or draft for \$5,000, and another one for \$10,000, both drawn by A. E. Palmer on the Exchange National Bank, in favor of Frank Steunenberg, sent to the Exchange National Bank.

Q. Was that placed to his credit in the bank of that date? A. Yes, \$15,000.

Q. I will ask you to look at an item, October 4th, 1902.

A. October 4th, 1902, a \$5,000 item drawn by A. E. Palmer, on the Exchange National Bank of Spokane, payable to Frank Steunenberg, sent to the First National Bank of Boise.

(Testimony of Lewis S. Dille.)

Q. And that amount was entered to the credit of Frank Steunenberg in the Caldwell bank as of the date of October 4th, 1902? A. Yes, sir.

Q. I will ask you to look at an item of April 3, 1903, for \$10,000.

A. April 3, 1903, a \$10,000 item, drawn by Frank Steunenberg on the Barber Lumber Company, made payable to the Commercial Bank, sent to the National Bank of the Republic.

Q. And that amount was entered to Mr. Steunenberg's credit April 3, 1903?

Mr. BUNDY.—I will tell you what I am going to do; if we can't save any time stipulating, I will withdraw all stipulations and let you prove what you can; you are proving about half of it.

Mr. GORDON.—I will ask you to look at item of February 10, 1903.

Mr. BUNDY.—\$20,000, Frank Steunenberg, Agent.

A. \$20,000, item sent to the National Bank of the Republic, drawn by Frank Steunenberg on the Barber Lumber Company.

Mr. GORDON.—Frank Steunenberg, Agent, or Frank Steunenberg?

A. The remittance-book shows Frank Steunenberg.

Mr. BUNDY.—Credited to what account?

A. Placed to the credit of Frank Steunenberg, Agent.

Mr. BUNDY.—That was the opening of his agency account with your bank?

(Testimony of Lewis S. Dille.)

Mr. GORDON.—I will ask you to see if you find an item in your remittance-books, February 14, 1903, \$25,000?

A. There is one on February 13, \$25,000, drawn by Frank Steunenberg on the Barber Lumber Company, in favor of the bank, for \$25,000.

Q. Where was that sent for collection?

A. That was sent to the National Bank of the Republic, and was placed to the credit of Frank Steunenberg, Agent, on February 14th; that is the date it shows on the ledger.

Q. Now, do you find an item of \$20,000 on March 16th, in the remittance-book?

A. On March 16th, \$20,000 item.

Q. March 16, 1903?

A. Drawn by Frank Steunenberg on the Barber Lumber Company, in favor of the bank, and sent to the National Bank of the Republic.

Q. What does the ledger account of Frank Steunenberg show?

A. It shows that it was placed to the credit of Frank Steunenberg, Agent, on that date.

Q. I will ask you to look for an item of May 6, 1903, \$7,500.

A. On May 7, 1903, there was an item for \$7500, drawn by Frank Steunenberg on the Barber Lumber Company, in favor of the bank, and sent to the National Bank of the Republic at Salt Lake.

Mr. BUNDY.—And credited to his account as agent?

(Testimony of Lewis S. Dille.)

A. It was placed to his credit as agent on May 6, 1903.

Mr. GORDON.—Q. I will ask you to look at account of August 5, 1903, item on the remittance-book.

A. An \$8,000 item—there is an \$8,000 item drawn by Frank Steunenberg on the First National Bank of Boise, in favor of the Commercial Bank, for \$8,000.

Q. That amount that same day was entered to the credit of Frank Steunenberg in the Bank of Caldwell?

A. Frank Steunenberg, Agent, yes, sir.

Mr. BUNDY.—You say that is drawn against who?

A. It is drawn on the First National Bank of Boise.

Q. Signed Frank Steunenberg, Agent?

A. Signed Frank Steunenberg, according to this record.

Q. But credited to his agency account?

A. Yes.

Mr. GORDON.—Q. I will ask you to look at an item of \$1,500, September 18, 1903.

A. September 18th, \$1,500, drawn by Frank Steunenberg on the Barber Lumber Company, made payable to the bank, and sent to the National Bank of the Republic, and credited to Frank Steunenberg, Agent, on that date.

Q. I will ask you to look at item of September 23, 1903, \$1,000, in the remittance-book.

A. An item for \$1,000, drawn by Frank Steunen-

(Testimony of Lewis S. Dille.)

berg on the First National Bank of Boise.

Mr. BUNDY.—Gordon, can't you see how you are getting this thing all balled up so you won't understand it, or anything else? When he is drawing on the bank at Boise he is drawing on his own account; the money which he had had been paid to him by the Barber Lumber Company.

Mr. GORDON.—The only thing I know is that I went to the First National Bank of Boise, and tried to find out how those three items were, and nobody could tell me. My impression is that he was drawing these checks on the \$50,000 deposit that Mr. Barber made there for him.

Mr. BUNDY.—That wasn't the only deposit that was made there.

Mr. GORDON.—Q. Did you testify to that item of the 23d of September, 1903?

A. The \$1,000 item?

Q. Yes.

A. I don't know. Anyway, there was a \$1,000 item placed to the credit of Frank Steunenberg on the 23d of September, 1903.

Q. Frank Steunenberg, Agent?

A. Frank Steunenberg, Agent, yes.

Q. And on that date what does your remittance-book show?

A. It shows that Frank Steunenberg drew a \$1,000 draft on the First National Bank of Boise.

Q. October 9, 1903, do you find a deposit to Frank Steunenberg, Agent, of \$10,000?

A. October 9th, yes.

(Testimony of Lewis S. Dille.)

Q. What does your remittance-book show of that date?

Mr. BUNDY.—That was a draft drawn on the company.

A. October 10th, the remittance-book shows that Frank Steunenberg drew on the Barber Lumber Company for \$10,000 in one item.

Mr. GORDON.—Q. Where was it sent to?

Mr. BUNDY.—It was \$13,000 altogether.

A. That was placed to his credit, and sent to the National Bank of the Republic.

Q. Do you find an item there of December 23, 1903, placed to the credit of Frank Steunenberg in the agency account of \$4,500? A. Yes, sir.

Q. Does your remittance-book show an item of that date? A. December 23, 1903?

Q. December 23d, 1903.

A. The remittance-book shows an entry of \$4,500, but doesn't give any description of it.

Q. None whatever?

A. Only that it was made payable to the Commercial Bank and drawn on the First National Bank of Boise.

Q. Was that drawn in blank, or what?

A. Well, I don't know—the description is omitted.

Q. See if you find an item of January 4, 1904, placed to the credit of Frank Steunenberg, Agent, for \$5,000? A. Yes, sir.

Q. Does your remittance-book—

A. There is a \$5,000 item sent to the First Nat-

(Testimony of Lewis S. Dille.)

ional Bank of Boise, drawn on the First National Bank of Boise, by Frank Steunenberg.

Q. What date? A. January 4, 1904.

Q. Do you find an item there, April 18, 1904, to the credit of Frank Steunenberg, Agent, in the ledger account, for \$2,000?

A. April 18th, yes, sir.

Q. 1904? A. 1904.

Q. Does your remittance-book show an item of that date corresponding to that amount?

A. Yes, sir.

Q. What is it?

A. It was an item drawn by W. E. Borah, Agent, made in favor of Frank Steunenberg, on the First National Bank of Boise.

Q. \$2,000? A. \$2,000.

Cross-examination.

(By Mr. BUNDY.)

Q. Now, Mr. Dille, the things that they have called your attention to are certain drafts or checks drawn by A. E. Palmer, in the first instance, in favor of Frank Steunenberg, and you would take those checks or drafts, deposit them to the credit of Steunenberg, and then send them for collection?

A. Yes.

Q. I suppose you have no means of knowing whether that is all the checks that were drawn by Palmer on Steunenberg or not.

A. It depends upon what you mean—no, if I understand your question.

Q. You don't mean to say that that is all the

(Testimony of Lewis S. Dille.)

checks that Palmer drew in favor of Steunenberg?

A. Oh, no; of course I couldn't answer that.

Q. Your records show the date of the deposit and don't show the date of the check; they would show the date of the deposit but not the date of the check?

A. In most cases it would show the date of the check also.

Q. In the remittance-book? A. Yes.

Q. Now, Governor Steunenberg, as I understand it, as agent of the Barber Lumber Company, maintained two accounts, one in the National Bank here in Boise and one at your bank in Caldwell.

A. I don't know anything about the Boise account.

Q. You know he was drawing money on the Boise bank?

A. But I don't know on what account.

Q. You do know that he was drawing drafts on this bank here in Boise?

A. Only so far as this record shows.

Q. And many of the credits found in his bank account with your bank were checks which he drew on the Boise bank? A. Yes.

Q. So that so far as showing the money sent to Governor Steunenberg by the Barber Lumber Company, you would know of nothing except where he drew directly on the Barber Lumber Company?

A. No.

Q. And so far as money furnished him by Palmer is concerned, you would know nothing except so far as Palmer's checks went through your bank?

(Testimony of Lewis S. Dille.)

A. That is all.

Q. Whether that states all the money or part of it, you don't know? A. No.

Q. Now look at April 10, 1902, again please, or in April, 1902—I don't know what date it would be credited in your book—a little after April 10, 1902.

A. \$5800.

Q. You find a check of Palmer's to Steunenberg deposited with your bank on April 14, 1902, for \$5800, do you not? A. Yes, sir.

Q. And it was credited to Governor Steunenberg's personal account with your bank on April 12, 1902, was it not? A. On April 14th.

Q. Your best recollection, from an investigation of this account of Steunenberg's, is that the first draft drawn by A. B. Campbell for \$15,000 was not paid, was charged back, and then a similar amount drawn again?

A. Yes, my recollection is that that item was returned unpaid, and immediately sent back—the same item.

Q. So that there was only one \$15,000 credit went to Governor Steunenberg?

A. That is my recollection.

Q. Now, Mr. Palmer issued a check to Steunenberg on the 11th of April for \$1200. See if you find any reference to that in your book.

A. It doesn't appear to be here.

Q. On April 25th he issued a check to Steunenberg for \$826. Did that go through your bank for collection? A. Issued April 25th?

(Testimony of Lewis S. Dille.)

Q. April 25th, yes. A. For how much?

Q. Eight hundred and twenty-five.

A. That would be a hard matter to testify to that without—all I could say was whether or not it appears to be credited to his account.

Q. Well, look at that then; was any such credit given him in your bank after April 25, 1902?

A. No, sir; there doesn't appear to be any such credit.

Q. Now, will you look through the year 1902 and tell me all of the—make a list, please, of all of the credits or checks issued by Palmer to Steunenberg which were placed in your bank for collection. Just go through your collection records—let's see how many of them we have got—they were all in large amounts.

A. Placed to the credit of Frank Steunenberg between what dates, Mr. Bundy?

Q. After April, 1902.

A. That necessitates my going over this again.

Q. You can make a list and then look it up in here.

A. Up to what time, Mr. Bundy; how far do you want this to run?

Q. Just 1902—well, take it clear through. Tell us how many of those credits were by means of checks drawn by A. E. Palmer.

A. It is a very difficult matter to run those down with nothing but the remittance-book and ledger.

Q. Take your time; that is the only question I want to ask you. Tell us how many of the credits

(Testimony of Lewis S. Dille.)

which were given to Frank Steunenberg, personally, as shown by the ledger account at the Caldwell bank consisted of checks drawn in his favor by A. E. Palmer, and which ones.

(Witness temporarily excused.)

Q. Can you state now, Mr. Dille, from looking in the ledger account of Frank Steunenberg with your Caldwell bank, and the remittance-books which you have produced in court, the dates and the amounts of the several deposits made by Governor Steunenberg, consisting of checks drawn, or drafts drawn by A. E. Palmer, and which were taken by your bank for collection? A. Yes, sir, I think so.

Q. Please state the date and the amount of each.

A. The \$5800 item April 14th, and \$15,000 on March 5th and February 25th.

Q. That was not drawn by A. E. Palmer; that was by A. B. Campbell.

A. That's right. On April 14th there was \$5800; June 27th \$5000; July 2d \$5000; July 9th \$5000; July 23d, 15,000; October 4th \$5000, making a total of \$40,800.

Q. That constitutes all of the moneys deposited by Frank Steunenberg to the credit of his personal account after April 10, 1902, which consisted of checks drawn by A. E. Palmer? A. Yes, sir.

Q. What is the amount again, please?

A. \$40,800.

Mr. BUNDY.—It lacks \$17,000 of being all we stipulated.

(Witness excused.)

[**Testimony of Edward E. Garrett, on Behalf of the Complainant (Recalled).**]

EDWARD E. GARRETT, recalled by complainant, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Garrett, do you know H. N. Coffin of this city? A. Yes.

Q. How long have you known him?

A. Oh, about fifteen years.

Q. Do you know his signature when you see it?

A. Yes.

Q. Do you know what his occupation was in June, 1903?

A. I think he was cashier of the Bank of Commerce at that time.

Q. I show you letter dated June 9, 1903, and ask you whether or not you recognize the signature there of H. N. Coffin, cashier. A. Yes.

Q. You say that is the signature of Mr. Coffin?

A. Yes.

Mr. KEIGWIN.—We offer this in evidence and propose to read it into the record.

Mr. BUNDY.—We object to it as incompetent, irrelevant and immaterial for any purpose.

Mr. GORDON.—The letter is on the paper of the Bank of Commerce, Limited, Boise, Idaho, dated June 9, 1903, and reads as follows:

“Harry S. Worthman,

Boise, Idaho.

Dear Sir:

I have the honor to inform you that Frank

(Testimony of Edward E. Garrett.)

Steunenberg of Caldwell, Idaho, has this day placed in this bank to the credit of William Sweet, of Boise, Idaho, the sum of \$10,255.85, distributed as follows: \$10,000, trustee fund; \$55.85, interest on overdraft; \$200, attorney's fee. (George M. Parsons.)

Very truly yours,

H. N. COFFIN,

Cashier Bank of Commerce."

Q. Mr. Garrett, did you know Mr. George M. Parsons? A. I did.

Q. What was his occupation?

A. He was attorney at law.

Mr. KEIGWIN.—Here in Boise? A. Yes.

Mr. GORDON.—Did he ever come to see you concerning any of the claims involved in this bill?

Mr. BUNDY.—I object to that as incompetent, irrelevant, and immaterial.

A. Yes.

Mr. GORDON.—Will you state when, to the best of your knowledge, and what happened on that occasion?

Mr. BUNDY.—The same objection, incompetent, irrelevant and immaterial.

A. It was in May, 1902, after these entries were returned from Washington with instructions that we issue final certificate and receipt if we were satisfied beyond question that they were regular, and I had refused to issue, and the matter was pending in Washington; about that time he came to me in my office, as receiver, and asked concerning these entries, said that he understood—as I remember, the

(Testimony of Edward E. Garrett.)

substance of the conversation was that he understood that I was holding up a lot of these timber and stone entries in the Basin, mentioned as the Basin entries, and asked concerning them, and exhibited to me a letter—either at that time or immediately afterwards—a letter from Washington, from Senator Dubois, who was then in Washington, stating that he had called upon the Commissioner of the General Land Office concerning these entries, and had presented the fact that I was refusing to issue on them, and the Commissioner had stated that I would get into serious trouble, or something to that effect, if I didn't do it. Parsons was a personal friend of mine; he presented that letter to me, and I told him that they were trying to force me to pass those entries and I wouldn't do it, I didn't care what the Commissioner would do in the matter.

Q. Who was Commissioner then?

A. Binger Herman.

Q. Was Mr. Parsons attorney of record in those cases?

A. No, there wasn't any cases then.

Q. And that was what date, did you say?

A. That was early in May, 1902.

Q. Mr. Garrett, I show you a paper dated "Department of the Interior, United States Land Office, Boise, Idaho, April 9, 1904," entitled United States vs. Arthur Anderson, headed, "Decision of Register and Receiver," and signed Harry J. Syms, Register, Edward E. Garrett, Receiver, and ask you if that is your signature and the signature of Mr. Syms, and if you prepared that decision and sent it to the Com-

(Testimony of Edward E. Garrett.)

missioner of the General Land Office at Washington on or about the date it bears.

A. That is the signature of Harry J. Syms and my signature attached, a decision I prepared in that case, and some time after April 9, 1904, was transmitted to the Commissioner of the General Land Office in connection with that case.

Mr. GORDON.—We offer that paper in evidence.
(Marked Plaintiff's Exhibit No. 311.)

Mr. BUNDY.—We object to it as incompetent, irrelevant and immaterial, not relating to any lands involved in this action.

Mr. GORDON.—Q. Mr. Garrett, did you know James T. Ball? A. Yes.

Q. Of Centerville, Idaho? A. Yes.

Q. Do you remember that he made a filing on a timber and stone claim in the land office at Boise in September, 1901?

A. I remember that he made a timber and stone entry, yes.

Q. I show you timber and stone land sworn statement of James T. Ball, dated September 25, 1901, and ask you if that paper is signed by James T. Ball and filed in the land office at Boise on or about the date it bears, while you were receiver of that office? A. Yes.

Q. I show you an affidavit of James T. Ball, taken before Edward E. Garrett, December 10, 1901, and ask if James T. Ball swore to that affidavit before you, and was that filed in your office in the land office? A. Yes.

(Testimony of Edward E. Garrett.)

Q. I show you the testimony of James T. Ball, taken before the land office on final proof December 10, 1901, and ask you if that is James T. Ball's signature to that paper? A. Yes.

Q. And that is your signature attached to the jurat, of that date? A. Yes.

Q. And the cross-examination attached—was that taken at the same time? A. Yes.

Mr. GORDON.—We offer in evidence the sworn statement of James T. Ball, dated September 25, 1901, and the affidavit and the final proof which has been identified here by the witness, to the southwest quarter of section 13, township 7 north, range 5 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 312A to 312D, inclusive.)

Mr. BUNDY.—I wish to ask Mr. Garrett a question or two with reference to that. Was any land sold by the Government to Mr. Ball by virtue of the entry papers shown you, or was his entry cancelled?

A. His entry was subsequently cancelled.

Q. And Mr. Ball did not acquire any lands by virtue of filing those papers?

A. No; that was involved in a contest proceeding by the Government, and the entry was cancelled.

Mr. BUNDY.—I object to it as incompetent, irrelevant, and immaterial.

Mr. GORDON.—Do you know in whose handwriting the sworn statement of James T. Ball is prepared, Mr. Garrett?

A. I couldn't say positively.

(Testimony of Edward E. Garrett.)

Mr. BUNDY.—Norman Young's, isn't it, or do you know his? A. No.

Mr. GORDON.—I hand you other papers, which are the non-mineral affidavit, and the notice of publication of James T. Ball, and other papers taken on final proof, and ask you if they are part of the files of the land office here, and were filed while you were receiver thereof?

A. Yes, the eight papers are files in that case.

Mr. GORDON.—We offer them in evidence.

(Marked Plaintiff's Exhibit No. 312E to 312K, inclusive.)

Mr. BUNDY.—The final proof papers of Mr. Ball are in conformity with the rules and regulations of the land office, are they? A. Yes.

Q. He made the sworn statement required by the statute? A. Yes.

Q. And the answers which he made to the questions on final proof on their face appeared to be correct and proper, did they?

A. Well, they were responsive to the questions.

Q. I mean to say, they conformed to all the requirements of the law on their face.

A. There was nothing in the answer contrary.

Q. Nothing appears on his papers which would indicate that he was making a false entry?

A. No.

Mr. BUNDY.—We object to them as incompetent, irrelevant and immaterial.

Mr. GORDON.—Mr. Garrett, did you know Harvey H. Wells? A. Yes.

(Testimony of Edward E. Garrett.)

Mr. BUNDY.—I desire to make further objection to the introduction of all of these papers as not proper rebuttal, in violation of the stipulation regarding rebuttal, and ask that they be stricken out.

Mr. GORDON.—I show you timber and stone land sworn statement of Harvey H. Wells, dated September 24, 1901, signed Harvey H. Wells, to the southwest quarter of section 14, township 7 north, range 5 east, and ask you if that paper was filed in your office on or about the date it bears? A. Yes.

Mr. GORDON.—We offer that paper in evidence.
(Marked Plaintiff's Exhibit No. 313A.)

Mr. BUNDY.—Objected to for the same reason.

Mr. GORDON.—I show you an affidavit or relinquishment filed by or signed by Harvey H. Wells, sworn to before Norman H. Young, notary public, June 21, 1905, relating to the property concerned in this sworn statement, and ask you whether or not that paper was filed in the land office while you were receiver? A. Yes.

Q. What date? A. June 28, 1905.

Mr. GORDON.—We offer that paper in evidence.
(Marked Plaintiff's Exhibit No. 313B.)

Mr. BUNDY.—Objected to as incompetent, irrelevant, immaterial.

Q. And I hand you what appears to be an application for a rehearing in the contest case in the land office, signed Harvey H. Wells, and a notice of appeal and a brief attached, and other papers, appearing to be the testimony of witnesses on final proof, in the same case of Harvey H. Wells, and ask you if

(Testimony of Edward E. Garrett.)

they are part of the files of your office?

A. These are part of the files in the case of T. & S. application of Harvey H. Wells, and the contest of the Government against the entry.

Q. I show you a paper signed E. A. Hitchcock, Secretary, dated May 24, 1905, and ask you if that is a part of the files relating to the same case, being a decision of the Secretary of the Interior cancelling, or affirming the decision of the Commissioner of the General Land Office, in the case of Harvey H. Wells.

A. It was a file in the case of United States vs. Harvey H. Wells, involving his timber and stone entry.

Mr. GORDON.—We offer them in evidence.

(Marked Plaintiff's Exhibit No. 313C to 313K, inclusive.)

Mr. BUNDY.—We object to it as incompetent, irrelevant and immaterial, and object to the competency of the witness to testify on the subject.

Mr. GORDON.—I show you a number of papers here, Mr. Garrett, having to do with the entry of Leonora Hollister, and ask you if they are all from the files of the land office and were filed by you as receiver of the land office at Boise.

Mr. BUNDY.—Didn't her papers go in before?

Mr. GORDON.—They are just some I found here.

Mr. BUNDY.—Any extra affidavits on her part?

Mr. GORDON.—I don't think there is; I think I took every affidavit out and put them in otherwise.

A. These are papers from the files of the land

(Testimony of Edward E. Garrett.)

office in connection with the timber and stone filing of Leonora Hollister.

Mr. GORDON.—We offer them in evidence.

(Marked Plaintiff's Exhibit No. 314A to 314K, inclusive.)

Q. I will ask you if the papers you now have in your hand, Mr. Garrett, are from the files of the land office here and were filed during your incumbency as receiver, and have to do with the timber and stone claim of John M. Neil? A. Yes.

Mr. GORDON.—We offer them in evidence.

(Marked Plaintiff's Exhibit No. 315A to 315E, inclusive.)

Q. I show you what purports to be a relinquishment signed by Ida M. Briggs, dated September 18, 1902, relinquishing the entry she made under timber and stone land sworn statement No. 295, and ask you if that was sworn to by Ida M. Briggs before you, and filed in your office, while you were receiver of the land office? A. Yes.

Q. When was it filed?

A. September 18, 1902.

Q. And I show you a letter addressed by James King, Register, and Edward E. Garrett, Receiver, to the Hon. Commissioner of the General Land Office, dated September 18, 1902, and ask you if that was a letter of yours and Mr. King's notifying the Commissioner that this relinquishment had been filed? A. Yes.

Mr. GORDON.—We offer those papers in evidence.

(Marked Plaintiff's Exhibit No. 316A and 316B.)

(Testimony of Edward E. Garrett.)

Mr. BUNDY.—Objected to as incompetent, irrelevant, and immaterial, not involving any lands mentioned in this complaint.

Q. Mr. Garrett, did that lady, Ida M. Briggs, enter any more land while you were in the land office? A. I think not.

Q. When did you go out of the land office?

A. In 1908.

Q. There was an entry made in 1904 or 5 by Abbie M. Briggs. That isn't the same person?

Mr. GORDON.—No.

Mr. KEIGWIN.—Abbie M. Briggs is a Wisconsin woman.

The WITNESS.—I think the other one is a still pending entry.

Mr. GORDON.—I show you the timber and stone land sworn statement of Ida M. Briggs, dated December 19, 1901, the notice of publication, the proof of Ida M. Briggs made before the land office on final proof, or the testimony of Ida M. Briggs, dated March 6, 1902, and ask you if they are part of the files of the land office, and whether that testimony was taken before you, and whether the papers were filed while you were receiver of the land office, all having to do with the entry of Ida M. Briggs to lots 1 and 2, and the south half of the northeast quarter of section 1, township 7 north, range 5 east, Boise Meridian?

A. Yes, these are papers in connection with Ida M. Briggs' filing.

Mr. GORDON.—We offer them in evidence.

(Testimony of Edward E. Garrett.)

(Marked Plaintiff's Exhibit 316C to 316L, inclusive.)

Mr. BUNDY.—We object to the introduction of the evidence and testimony of a claimant who didn't procure any land, as incompetent, irrelevant and immaterial.

Mr. GORDON.—I show you the non-mineral affidavit of Charles W. Balantine, and testimony of Joseph M. Hollister and Patrick H. Downs, witnesses of Charles W. Balantine when he made his final proof, and the cross-examination, and ask you if they are part of the files of the land office, and were filed while you were receiver of the same?

A. Yes.

Mr. GORDON.—We offer them in evidence.

(Marked Plaintiff's Exhibit No. 317A to 317F, inclusive.)

Mr. BUNDY.—The same objection, incompetent, irrelevant, and immaterial, and not proper rebuttal.

Mr. GORDON.—Q. I show you the testimony of Charles Nelson, made before Edward E. Garrett, and the cross-examination thereto, one of the final proof witnesses of Louisa B. West; also the testimony and cross-examination of Gustave Link, made before Edward E. Garrett, in the same case; the notice of publication; and the non-mineral affidavit, all having to do with the final proof and the entry of Louisa B. West, and ask you if they are parts of the files of the land office at Boise, and were filed while you were receiver of that office?

(Testimony of Edward E. Garrett.)

A. Yes.

Mr. GORDON.—We offer them in evidence.

(Marked Plaintiff's Exhibit No. 318A to 318H, inclusive.)

Mr. BUNDY.—The same objection.

Mr. GORDON.—I will state that when we examined Lewis Nibler I offered the filing papers, and they were not all then in my possession, and I now have the rest of the papers, and ask Mr. Garrett if they are from the files of the land office, and were filed in the entry of Lewis Nibler, while he was receiver of the land office.

A. Yes, these are files in the application of Lewis Nibler.

Mr. GORDON.—We offer them in evidence.

(Marked Plaintiff's Exhibit No. 319A to 319H, inclusive.)

Q. I show you the testimony of Adella C. Brookhart, and the cross-examination of her, taken before Edward E. Garrett, in relation to the entry of Lola T. Thurman, and ask you if that is a part of the files of the land office, and that examination was conducted before you and was a part of the files, while you were receiver of that office.

A. Yes, that is a part of the files in that case.

Mr. GORDON.—We offer that in evidence.

(Marked Plaintiff's Exhibit No. 320A and 320B.)

Mr. KEIGWIN.—We shall ask to have the following deeds copied into the record: A deed running from Albert E. Palmer, of Spokane, Washington, to the Barber Lumber Company, a corpora-

(Testimony of Edward E. Garrett.)

tion, of Eau Claire, Wisconsin—we will have the four of them marked as exhibits and ask to have them transcribed into the record.

(Deeds marked Plaintiff's Exhibit No. 321A, 321B, 321C, and 321D.)

Mr. BUNDY.—With the understanding that the original deeds are not to be kept on file, and will be returned to the Barber Lumber Company; that is the understanding, is it?

Mr. KEIGWIN.—Let that go into the record.

Plaintiff's Exhibit No. 321A.

“Know all men by these presents, that Albert E. Palmer (unmarried) of Spokane, Washington, party of the first part, in consideration of the sum of One Dollar (\$1.00) and other valuable considerations, the receipt whereof is hereby confessed and acknowledged, does hereby remise, release, sell, convey and quitclaim unto Barber Lumber Company, a corporation of Eau Claire, Wisconsin, party of the second part and to its successors and assigns forever, all the right, title, interest, claim and demand which said party has in and to the following described real estate, situated in the County of Boise, in the State of Idaho, to wit:

Township six (6) North, Range five (5) East, Boise Meridian; the Southeast quarter of Section seven (7):

Township six (6) North, Range six (6) East, Boise Meridian; the East half of the Southeast quarter of Section seven (7); the South half of the Southwest quarter of section eight (8); the Northwest

quarter, the South half of the Southwest quarter, and the South half of the Southeast quarter of section seventeen (17); the East half of the Northeast quarter, and the East half of the Southeast quarter of Section eighteen (18); the East half of the Northeast quarter, and the East half of the Southeast quarter of Section nineteen (19); the whole of Section twenty (20); the entire West half of Section twenty-one (21); the entire West half of Section twenty-eight (28); the Northeast quarter, the North half of the Southwest quarter, the Southwest quarter of the Southwest quarter, and the Northwest quarter of the Southeast quarter of Section twenty-nine (29); the Southeast quarter of Section thirty-one (31); the Northeast quarter, the East half of the Northwest quarter, the East half of the Southwest quarter, and the Southeast quarter of Section twenty-two (22); and the entire West half of Section thirty-three (33);

Township six (6) North, Range 7 East, Boise Meridian: Lots numbers one (1) and two (2), and the South half of the Northeast quarter of Section one (1):

Township seven (7) North, Range four (4) East, Boise Meridian: the Southwest quarter of the Northeast quarter, the South half of the Northwest quarter, the Southwest quarter, and the Northwest quarter of the Southeast quarter of Section thirty-three (33); the Southwest quarter of the Northeast quarter, and the South half of the Northwest quarter of Section thirty-four (34);

Township seven (7) North, Range five (5) East,

Boise Meridian: Lots numbers three (3) and four (4), the Southeast quarter of the northwest quarter, the North half of the Southwest quarter, the Southeast quarter of the Southwest quarter, and the Southeast quarter of Section one (1); Lots numbers one (1), two (2), and three (3), the South half of the Northeast quarter, and the South half of the Northwest quarter of Section two (2); Lot number four (4), and the Southwest quarter of the Northwest quarter of Section four (4); Lots numbers three (3) and four (4), the South half of the Northwest quarter, the Southwest quarter, the South half of the Southeast quarter of Section five (5); the Southeast quarter of Section six (6); the Northeast quarter, the Southeast quarter of the Northwest quarter, the East half of the Southwest quarter, and the Southeast quarter of Section seven (7); the Northeast quarter, the Northwest quarter, the Southwest quarter, the Northwest quarter of the Southeast quarter, and the South half of the Southeast quarter of Section eight (8); the Southeast quarter of Section eleven (11); the Northeast quarter, the East half of the Northwest quarter, the Southwest quarter of the Northwest quarter of Section twelve (12); the Northeast quarter, the Northwest quarter, and the Southeast quarter of Section thirteen (13); the Northeast quarter of Section fourteen (14); the entire South half of Section fifteen (15): The North half of the Northeast quarter, the Northwest quarter, and the Southwest quarter of Section seventeen (17); the Northeast quarter, the Northeast quarter of the Northwest quarter, the

North half of the SE. 1/4, Section eighteen (18); the Southwest quarter of the Northeast quarter, the Northwest quarter of the Southeast quarter, and the South half of the Southeast quarter of Section nineteen (19); the Northeast quarter, the East half of the Southwest quarter, and the Southeast quarter of Section twenty-one (21); the Northwest quarter of the Northeast quarter, the Northwest quarter, the Southwest quarter, and the Southeast quarter of Section twenty-two (22); the whole of Section twenty-three (23); the whole of Section twenty-four (24); the Northeast quarter, the Northwest quarter, and the Southeast quarter of section twenty-five (25); the Northwest quarter of the Northeast quarter, the North half of the Northwest quarter and the south half of the Southwest quarter of Section twenty-seven (27); the Northeast quarter, the East half of the Northwest quarter, and the South half of the Southeast quarter of Section twenty-eight (28); the West half of the Northeast quarter, the East half of the Northwest quarter, Lots numbers one (1), three (3), and four (4), the East half of the Southwest quarter, the Northwest quarter of the Southeast quarter of Section thirty (30); the West half of the Northeast quarter, the East half of the Northwest quarter, Lot number one (1), and the Northeast quarter of the Southwest quarter of Section thirty-one (31); the East half of the Northeast quarter, and the Southeast quarter of Section thirty-three (33); the West half of the Northeast quarter, the Northwest quarter, and the Southeast quarter of Section thirty-four (34); and the entire South

half of Section thirty-five (35);

Township seven (7) North, Range six (6) East, Boise Meridian: Lots Numbers three (3), four (4), five (5), six (6), and seven (7), the Southeast quarter of the Northwest quarter, and the East half of the Southwest quarter of Section six (6); Lots numbers three (3) and four (4), and the East half of the Southwest quarter of Section seven (7); Lots numbers one (1) and two (2), and the East half of the Northwest quarter of Section eighteen (18);

Township seven (7) North, Range seven (7) East, Boise Meridian: The entire East half of Section twenty-five (25).

Township eight (8) North, Range five (5) East, Boise Meridian: the South half of the Northeast quarter, the South half of the Northwest quarter, the Southwest quarter, and the Southeast quarter of Section twenty-five (25); the entire East half of Section twenty-six (26); the Southwest quarter of the Northeast quarter, and the West half of the Southeast quarter of Section twenty-seven (27); the South half of the Southwest quarter of Section thirty-two (32); the South half of the Northwest quarter, and the Southwest quarter of Section thirty-three (33); the Northwest quarter of the Northeast quarter of Section thirty-four (34); the Northeast quarter, the East half of the Northwest quarter, and the East half of the Southwest quarter of Section thirty-five (35);

In all containing sixteen thousand and twenty-five, and ninety-two hundredths (16025.92) acres, more or less, according to the government survey

thereof:

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in any wise appertaining, and all the estate, right, title, interest and claim whatsoever of the said party of the first part, either in law or in equity, either in possession or in expectancy, to the only proper use, benefit and behoof of said party of the second part, and to its successors and assigns forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal, this twenty-seventh day of May, in the Year of Our Lord, One Thousand, Nine Hundred and Five.

A. E. PALMER. [Seal]

In Presence of,

W. J. BOLAND.

J. GERNILOST.

Dominion of Canada,
Province of Ontario,
County of York,—ss.

On this twenty-seventh day of May, 1905, before me, a Notary Public in and for said county, personally appeared Albert E. Palmer, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and official seal the day and year in this certificate first above written.

W. J. BOLAND. [Seal]

A Notary Public in and for the Province of Ontario."

[Endorsed]: "Quit Claim Deed. A. E. Palmer to Barber Lumber Company. Title No. 213. #4364.

State of Idaho,
County of Boise,—ss.

I hereby certify that this instrument filed for record at request of Barber Lbr. Co. at 16 minutes past 4 P. M. this 3d day of June, A. D. 1905, in my office, and duly recorded in book 29 of Deeds at page 68.

KATE GORMAN,
Ex-Officio Recorder.
W. A. Wilson,
Deputy."

Plaintiff's Exhibit No. 321B.

"Know all men by these presents, that Albert E. Palmer, unmarried, of Spokane, Washington, party of the first part, in consideration of the sum of One Dollar (\$1.00) and other valuable considerations, the receipt whereof is hereby confessed and acknowledged, does hereby remise, release, sell, convey and quit-claim unto Barber Lumber Company, a corporation of Eau Claire, Wisconsin, party of the second part, and to its successors and assigns forever, all the right, title, interest, claim and demand which said party has in and to the following described real estate, situated in the County of Boise, in the State of Idaho, to-wit:

The Northeast quarter, the East half of the Northwest quarter, the East half of the Southwest quarter, and the Southeast quarter of Section thirty-two

(32); Township six (6), North, Range six (6) East, Boise meridian; in all containing four hundred and eighty (480) acres, more or less, according to the government survey thereof.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in any wise appertaining, and all the estate, right, title, interest and claim whatsoever of the said party of the first part, either in law or in equity, either in possession or expectancy, to the only proper use, benefit and behoof of said party of the second part, and to its successors and assigns forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal this twenty-eighth day of June, in the Year of Our Lord, One Thousand, Nine Hundred and Five.

A. E. PALMER. [Seal]

In presence of,

W. J. BOLAND.

Dominion of Canada,
Province of Ontario,
County of York,—ss.

On this twenty-eighth day of June, 1905, before me, a Notary Public in and for said County, personally appeared Albert E. Palmer, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand

and official seal the day and year in this certificate first above written.

[Seal]

W. J. BOLAND,
Notary Public."

[Endorsed]: "Title No. 213. Quit Claim Deed.
A. E. Palmer to Barber Lumber Co. #4539.

State of Idaho,
County of Boise,—ss.

I hereby certify that this instrument filed for record at request of Barber Lbr. Co. at 43 minutes past 3 o'clock P. M., this 5 day of July A. D., 1905, in my office, and duly recorded in book 29 of Deeds at page 92.

KATE GORMAN,
Ex-Officio Recorder."

Plaintiff's Exhibit No. 321C.

"Know all men by these presence, that Horace S. Rand and Ruth G. Rand, his wife, of Burlington, Iowa, parties of the first part, in consideration of the sum of One Dollar (\$1.00) and other valuable considerations, the receipt whereof is hereby confessed and acknowledged, do hereby remise, release, sell, convey and quit claim unto Barber Lumber Company, a corporation of Eau Claire, Wisconsin, party of the second part, and to its successors and assigns forever, all the right, title, interest, claim and demand which said parties of the first part have in and to the following described real estate, situated in the County of Boise, in the State of Idaho, to-wit:

Township six (6) North, Range seven (7) East, Boise Meridian; in Section one (1), Lots numbers

three (3) and four (4), and the South half of the Northwest quarter, the North half of the Southeast quarter, and the Southeast quarter of the Southeast quarter; in Section twelve (12), the Northeast quarter of the Northeast quarter.

Township six (6) North, Range eight (8) East, Boise Meridian; in Section five (5), Lots numbers one (1), two (2), three (3), and four (4), in Section six (6), Lots numbers two (2), three (3), four (4) and five (5), six (6) and seven (7), the Southwest quarter of the Northeast quarter, the Southeast quarter of the Northwest quarter; in Section Seventeen (17), the West half of the Northeast quarter, and the East half of the Northwest quarter; in Section twenty-nine (29), the Northwest quarter, and the Southwest quarter; in Section thirty (30), the Northeast quarter; in Section thirty-one (31), East half of the Northeast quarter; in Section thirty-two (32), the West half of the Northwest quarter, and the East half of the Southeast quarter; in Section thirty-three (33), the West half of the Southwest quarter.

Township seven (7) North, Range 7 East, Boise Meridian: in Section one (1), Lots numbers one (1), two (2), three (3), and four (4); in Section two (2), Lots numbers one (1), two (2), three (3) and four (4), the South half of the Northeast quarter, and the South half of the Northwest quarter; in Section three (3), Lots numbers two (2) and three (3), the Southwest quarter of the Northeast quarter, and the Southeast quarter of the Northwest quarter, the East half of the Southwest quarter and the West

half of the Southeast quarter; in Section eleven (11), the East half of the Southeast quarter; in Section twelve (12), the Northeast quarter, the Northeast quarter of the Northwest quarter, the South half of the Northwest quarter, the Southwest quarter, and the Southeast quarter; in Section thirteen (13), the Northeast quarter, the Northwest quarter, and the Southwest quarter; in Section fourteen (14), the East half of the Northeast quarter, the Northeast quarter of the Southeast quarter, and the South half of the Southeast quarter; in Section fifteen (15), the North half of the Southwest quarter, and the North half of the Southeast quarter; in Section twenty-one (21), the Northeast quarter of the Southeast quarter; in Section twenty-two (22), the West half of the Northeast quarter, the East half of the Northwest quarter, the North half of the Southwest quarter, and the Southwest quarter of the Southwest quarter; in Section twenty-three (23), the North half of the Northeast quarter; in Section twenty-four (24), the East half of the Northeast quarter, and the North half of the Southeast quarter; in Section twenty-six (26), the Southwest quarter of the Northwest quarter, and the West half of the Southwest quarter; in Section twenty-seven (27), the Northeast quarter of the Southeast quarter.

Township seven (7) North, Range eight (8) East, Boise Meridian; in Section two (2), Lot number four (4), the Southwest quarter of the Northwest quarter, and the West half of the Southwest quarter; in Section three (3), Lots numbers (1) and two (2), the South half of the Northeast quarter, the Southwest

quarter, and the Southeast quarter; in Section four (4), Lots numbers one (1), two (2), three (3), and four (4), the South half of the Northeast quarter, the South half of the Northwest quarter, the Southwest quarter, the North half of the Southeast quarter and the Southwest quarter of the Southeast quarter; in Section seven (7) Lots numbers one (1), two (2), three (3), and four (4), the East half of the Northwest quarter, the East half of the Southwest quarter, and the Southeast quarter; in Section eight (8), the Southwest quarter; in Section nine (9), the South half of the Northeast quarter; the Northwest quarter of the Northwest quarter, and the North half of the Southeast quarter; in Section ten (10), the Northeast quarter, the Northwest quarter, the Southwest quarter, and the Southeast quarter; in Section eleven (11), the Northwest quarter and the Southwest quarter; in Section twelve (12), the Southwest quarter and the Southeast quarter; in Section thirteen (13), the Northwest quarter; in Section fourteen (14), the West half of the Northeast quarter, the Northwest quarter, the Southwest quarter, and the West half of the Southeast quarter; in Section fifteen (15), the North half of the Northeast quarter, the North half of the Northwest quarter, and the South half of the Southeast quarter; in Section seventeen (17), the Southeast quarter of the Northeast quarter, the Northeast quarter of the Southeast quarter, and the South half of the Southeast quarter; in Section eighteen (18), Lot number four (4), the Southeast quarter of the Southwest quarter, and the South half of the Southeast quarter;

in Section nineteen (19), the Northwest quarter of the Northeast quarter, the South half of the Northeast quarter, Lots numbers one (1), two (2), and three (3), the East half of the Northwest quarter, the Northeast quarter of the Southwest quarter, and the North half of the Southeast quarter; in Section twenty (20), the Northwest quarter of the Northeast quarter, the South half of the Northeast quarter, the Southwest quarter of the Northwest quarter, and the Northeast quarter of the Southeast quarter; in Section twenty-one (21), the Northeast quarter, the Northeast quarter of the Northwest quarter, the South half of the Northwest quarter, and the Northwest quarter of the Southwest quarter; in Section twenty-two (22), the Northeast quarter, the Northwest quarter, the Southwest quarter, and the Southeast quarter; in Section twenty-three (23), the North half of the Northeast quarter, the Northeast quarter of the Northwest quarter, the South half of the Northwest quarter, and the Southwest quarter; in Section twenty-four (24), the South half of the Northeast quarter, the Northwest quarter, the North half of the Southwest quarter, the Southeast quarter of the Southwest quarter, and the Southeast quarter; in Section twenty-five (25), the Northeast quarter, the Northwest quarter, the Southwest quarter, and the Southeast quarter; in Section twenty-six (26), the Southeast quarter of the Northeast quarter, the North half of the Northwest quarter, the Southwest quarter of the Northwest quarter, the Northwest quarter of the Southwest quarter, the Northeast quarter of the Southeast quarter, and the South half

of the Southeast quarter; in Section twenty-seven (27), the Northeast quarter, the Northwest quarter, the North half of the Southwest quarter, and the Southeast quarter; in Section twenty-eight (28), the Northeast quarter, and the North half of the Southeast quarter; in Section twenty-nine (29), the Southwest quarter of the Southwest quarter; in Section thirty (30), Lots numbers one (1), two (2), three (3), and four (4), the Southeast quarter of the Southwest quarter, and the South half of the Southeast quarter; in Section thirty-one (31), the Northeast quarter, Lots numbers one (1), and two (2), the East half of the Northwest quarter, and the Southeast quarter; in Section thirty-two (32), the Northeast quarter, the Northwest quarter, the Southwest quarter, and the Southeast quarter; in Section thirty-three (33), the Southwest quarter; in Section thirty-four (34), the East half of the Northeast quarter, and the North half of the Southeast quarter; in Section thirty-five (35), the Northeast quarter.

In all containing fifteen thousand, four hundred and ninety-six and sixty-five hundredths (15,496.65) acres, more or less, according to the Government survey thereof.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in any wise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of the said parties of the first part, either in law or in equity, either in possession or expectancy, to the only proper use, benefit and behoof of said party of the second part, and to its succes-

sors and assigns forever.

In witness whereof, the parties of the first part have hereunto set their hands and seals this 24th day of July, in the year of our Lord, One Thousand, Nine Hundred and Five.

HORACE S. RAND [Seal]

RUTH G. RAND [Seal]

In presence of,

HERBERT ROBERTS,

W. F. GILMAN.

State of Iowa,

County of Des Moines.—ss.

On this 24th day of July, 1905, before me, Wm. F. Gilman, a Notary Public in and for said County, personally appeared Horace S. Rand, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same, and on this 24th day of July, 1905, before me, the officer above described, personally appeared Ruth G. Rand known to me to be the person whose name is subscribed to the within instrument, described as a married woman; and upon an examination without the hearing of her husband, I made her acquainted with the contents of the instrument, and thereupon she acknowledged to me that she executed the same, and that she does not wish to retract the execution.

In witness whereof, I have hereunto set my hand

and affixed my official seal, the day and year in this certificate first above written.

[Seal]

WM. F. GILMAN,
Notary Public,
County of Des Moines,
State of Idaho."

[Endorsed]: "Title No. 218. No. 4646.

State of Idaho,
County of Boise,—ss.

I hereby certify that this instrument filed for record at request of Barber Lbr. Co. at 36 minutes past 3 o'clock P. M. this 28 day of July, A. D., 1905, in my office, and duly recorded in book 29 of Deeds at page 111.

KATE GORMAN,
Ex Officio Recorder.
W. A. Wilson,
Deputy."

Plaintiff's Exhibit No. 321D.

"Know all men by these presents, that George S. Long and Carrie B. Long, his wife, of Tacoma, Washington, parties of the first part, in consideration of the sum of One Dollar (\$1.00) and other valuable considerations, the receipt whereof is hereby confessed and acknowledged, do hereby remise, release, sell, convey and quit-claim unto Barber Lumber Company, a corporation of Eau Claire, Wisconsin, party of the second part, and to its successors and assigns forever, all the right, title, interest, claim and demand which said parties of the first part have in and to the following described real

estate, situated in the County of Boise, in the State of Idaho, to wit:

Township five (5) North, Range four (4) East, Boise Meridian: in Section four (4), Lots five (5), six (6) and seven (7), the Southeast quarter of the Northwest quarter, the Northeast quarter of the Southwest quarter, and the West half of the Southeast quarter; in section nine (9), the Northwest quarter of the Northeast quarter.

Township six (6) North, Range four (4) East, Boise Meridian: in Section one (1), Lot number two (2), the Southwest quarter of the Northeast quarter, and the West half of the Southeast quarter; in Section twelve (12), the Southwest quarter of the Northeast quarter, the North half of the Southeast quarter, and the Southeast quarter of the Southeast quarter; in Section fifteen (15), the Northeast quarter, the Northwest quarter, the Southwest quarter, and the Southeast quarter; in Section seventeen (17), the Southeast quarter of the Southwest quarter, the Northeast of the Southeast quarter, and the South half of the Southeast quarter; in Section twenty (20), the Northeast quarter, the Northwest quarter, the Southwest quarter, and the Southeast quarter; in Section twenty-one (21), the Northeast quarter, the Northwest quarter, the Southwest quarter, and the Southeast quarter; in Section twenty-two (22), the West half of the Northeast quarter, the North half of the Northwest quarter, the Southwest quarter of the Northwest quarter, the West half of the Southwest quarter, and the Southeast quarter of the Southwest quarter; in Section twenty-three (23), the

Southwest quarter; in Section twenty-seven (27), the East half of the Northeast quarter, and the East half of the Southeast quarter; in Section twenty-eight, (28), the West half of the Northeast quarter, the Northwest quarter, the Southwest quarter, and the West half of the Southeast quarter; in Section twenty-nine (29), the Northeast quarter, the Northwest quarter, the Southwest quarter, and the Southeast quarter.

In all containing four thousand, four hundred and seventy-four, and eighty-three hundredths (4474.83) acres, more or less, according to the government survey thereof.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in any wise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever of the said parties of the first part, either in law or in equity, either in possession or expectancy, to the only proper use, benefit and behoof of said party of the second part, and to its successors and assigns forever.

In witness whereof the parties of the first part have hereunto set their hands and seals this 10th day of April, in the Year of Our Lord, One Thousand, Nine Hundred and Five.

GEORGE S. LONG, [Seal]
CARRIE B. LONG. [Seal]

In presence of,
MONOMIA EVANS,
HUGH STEWART.

State of Washington,
County of Pierce,—ss.

On this 10th day of April, 1905, before me Hugh Stewart, a Notary Public in and for said County, personally appeared George S. Long known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same, and on this 10th day of April, 1905, before me, the officer above described, personally appeared Carrie B. Long, known to me to be the person whose name is subscribed to the within instrument, described as a married woman; and upon an examination without the hearing of her husband, I made her acquainted with the contents of the instrument, and thereupon she acknowledged to me that she executed the same, and that she does not wish to retract the execution.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[Seal]

HUGH STEWART,

Notary Public for State of Washington, residing in
Tacoma, Washington.”

[Endorsed]: “Title No. 217. Applies to titles # 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 189, and 195. Quit Claim Deed Geo. S. Long and wife to Barber Lumber Co. 4474.83 A. #4147.

State of Idaho,
County of Boise,—ss.

I hereby certify that this instrument filed for record at request of Barber Lbr. Co. at 2 minutes past 9 o'clock A. M. this 15 day of Apr. A. D., 1905, in my office, and duly recorded in book 27 of Deeds, at page 633.

KATE GORMAN,
Ex Officio Recorder.
W. A. Wilson,
Deputy."

Mr. GORDON.—Q. Mr. Garrett, I show you the notice of publication in the entry of William W. Abrams, the nonmineral affidavit in the same case, the examination and cross-examination of Louis L. Folsom, and the examination and cross-examination of Patrick H. Downs, witnesses produced by Mr. Abrams on final proof, and ask you whether you conducted that examination, and whether those papers are part of the files of the land office at Boise, and were filed during your incumbency as receiver of that office.

A. These are files in the timber and stone application and proof of William W. Abrams, and were filed while I was receiver of the land office, and the examination was conducted before me.

Mr. GORDON.—We offer them in evidence.

(Marked Plaintiff's Exhibit No. 322A to 322I, inclusive.)

Q. I show you timber and stone land sworn statement of Patrick H. Downs, dated August 17, 1901,

(Testimony of Edward E. Garrett.)

the notice of publication of the same date, the testimony of Patrick H. Downs, given on final proof November 13, 1901, the cross-examination attached, and ask you—relating to the entry of Mr. Downs—the north half of the northeast quarter, and the north half of the northwest quarter of section 17, township 7 north, range 5 east, and ask you if they are a part of the files of the land office at Boise, and whether or not you conducted the cross-examination and examination of Mr. Downs on final proof.

A. These are files in the case of the application and proof of Patrick H. Downs for the land described, and submitted before me while I was receiver of the land office, and are a part of the files in that case.

Q. And the receiver's receipt and the register's certificate, dated July 26, 1902, in relation to Patrick Downs' payments in that case, are also a part of the files of that office?

A. Yes, the register's certificate and the receiver's duplicate receipt are attached to the files.

Q. Is the testimony of Henry A. Snow and Julia M. Anderson, and the cross-examination of those witnesses, also a part of the files in that case?

A. Yes.

Q. I show you what purports to be an affidavit made by Patrick H. Downs before Edward E. Garrett, dated November 14, 1901, in relation to sworn statement No. 204, and ask you if that affidavit was made before you by Patrick H. Downs, and is a part of the files of the land office.

A. Yes.

(Testimony of Edward E. Garrett.)

Mr. GORDON.—We offer those papers in evidence, together with certified copy of the patent to the land described in the entry of Patrick H. Downs, dated February 1, 1904.

(Marked Plaintiff's Exhibit 323A to 323L, inclusive.)

Q. Mr. Garrett, I show you timber and stone land sworn statement of William F. Snow, dated September 10, 1901, the non-mineral affidavit of William F. Snow, the notice of publication, dated September 10, 1901, affidavit made by William F. Snow before Edward E. Garrett, November 30, 1901, the testimony of William F. Snow, given on final proof November 30, 1901, before Edward E. Garrett, receiver and the testimony of Patrick H. Downs and James H. Hamilton, the other witnesses produced by Mr. Snow on final proof, together with the cross-examination of said witnesses, all to the west half of the northwest quarter, and the west half of the southwest quarter of section 22, township 7 north, range 5 east, Boise Meridian, and ask you if they are part of the files of the land office at Boise and were filed while you were receiver of said office.

A. Yes, those are part of the files in that case, filed while I was receiver of the land office.

Q. And the receiver's certificate and register's receipt, dated October 14, 1902, in relation to the same entry, are they also parts of the files of said office?

A. The register's certificate and the receiver's

(Testimony of Edward E. Garrett.)

final receipt attached are part of the files in said case.

Mr. GORDON.—We offer the papers in evidence, together with certified copy of the patent, dated February 1, 1904, to the land entered by William F. Snow, description having heretofore been read into the record.

(Marked Plaintiff's Exhibit No. 324A to 324N, inclusive.)

Mr. KEIGWIN.—Mr. Garrett, I show you three letters, purporting to be signed by yourself, as receiver of the local land office, entitled in the cases respectively *United States vs. Arthur Anderson*, *United States vs. James T. Ball*, and *United States vs. Abel Edward Hunter*, all dated August 10, 1905, and ask you if you recognize those papers, those letters as having been signed and transmitted by you to the Commissioner of the Land Office.

A. Yes, those are letters that have been dictated, and signed and transmitted in those respective cases to the Commissioner of the General Land Office.

Q. Do these letters apply to the cases of *Anderson*, *Ball* and *Hunter*—do you remember whether or not a similar letter, containing similar facts, was sent in the case of *Harvey H. Wells*?

A. Yes, there was a similar letter sent at the same time regarding *Harvey H. Wells*.

Mr. KEIGWIN.—We offer them in evidence.

(Letters marked Plaintiff's Exhibit No. 325A, 325B, and 325C.)

Mr. BUNDY.—We object to them as incompetent,

(Testimony of Edward E. Garrett.)

irrelevant and immaterial for any purpose.

Mr. GORDON.—Mr. Garrett, do you know when the entry of John I. Wells was suspended, or whether it was suspended?

A. It was suspended under that general order at the time final proof was submitted, in December, 1901; I think subsequently it was allowed and final papers issued—some time afterwards, a year or two afterwards, though I don't know whether patent ever issued.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Garrett, was it customary for the local officers to report on each case after final proof was made to the Department at Washington?

A. During that suspension, yes.

Q. That is, during the time, during the summer or fall of 1901 up till the 6th of June, 1902?

A. Yes, sir.

Q. When final proof was made and submitted you reported on each case? A. Yes.

Q. And where would that report be sent—to Washington? A. Yes.

Q. And made a part of the files in that case?

A. I think so, yes.

Q. And then after final proof is allowed is it the practice and rule of the Department that you send all of the papers to Washington?

A. They go to Washington after the final action of the local office is taken.

Q. You don't wait for patent? A. No.

(Testimony of Edward E. Garrett.)

Q. As soon as you issue final receipt and certificate, you then transmit to Washington all the files relating to that particular entry?

A. They go in with the regular monthly report in the month they are acted on.

Q. And between those intervals you reported on each one of those entries? A. Yes.

Q. Now, I notice among the papers that have been offered here relating to the timber and stone entry of Lewis Nibler, and I notice it in a good many others, is a report by yourself and the register.

A. Yes.

Q. Is that in substance the report you made on each one on which you had issued final receipt?

A. This is a similar report to that made for each one that was suspended during that period.

Q. This report, signed by you, reads as follows: "In re Timber and Stone Sworn Statement No. 261, of LOUIS NIBLER, for SE. $\frac{1}{4}$ Sec. 23, Tp. 7 N., R. 5 E.

REPORT OF REGISTER AND RECEIVER.

Final proof in this case was offered this day and the testimony of claimant and witnesses taken. Final certificate and receipt were not issued, per letter 'P' of July 13, 1901.

Pursuant to the instructions contained in said letter, we have the honor to report that the instructions relative to the manner of taking such proof were carefully followed in this case; that the questions propounded to the claimant and witnesses were explained fully when necessary; that we are satisfied

(Testimony of Edward E. Garrett.)

that the answers were made understandingly; that section 5392 of the Revised Statutes was read to the claimant and witnesses.

This is a filing for land in the Boise basin. The entryman offered the proof in a straightforward manner—his bearing and conduct being apparently open and frank. From the testimony it appears to be an entry within the law and should therefore be allowed.

(Signed) JAMES KING,

Register.

EDWARD E. GARRETT,

Receiver."

Now as I understand it you sent reports approving each one of the suspended entries upon which final proof was tendered, prior to June 6, 1902.

A. All reported in during that time, there was a report made; the report was very similar to that in each case.

Q. It necessarily would be a report approving the entry, of course, or you wouldn't issue the final receipt.

A. We didn't issue the final receipt at the time the report was made; we subsequently issued them, but not on that report.

Q. But wherever you did subsequently issue final receipt and final certificate you had, previous to that time, made a favorable report, had you not?

A. Made a similar report to this.

Q. And those reports were all on file at Washington and supposed to be with the other papers?

(Testimony of Edward E. Garrett.)

A. Those reports came back with the papers for our action, as I have heretofore stated.

Q. I think you said the other day that Mr. Sharp came here some time in May, 1902.

A. I think about the first of May.

Q. And stayed here until when?

A. His headquarters were here until the fall of 1904, I believe.

Q. How much of the time did he put in here in Boise, and in this vicinity?

A. Nearly all the time.

Q. Do you recall his leaving here during the summer of 1902, in July some time?

A. Well, only for a short period he was away; he might have been away for a short time.

Q. So that he wasn't recalled and taken out of this district until sometime in 1904?

A. No, that is correct.

(Witness excused.)

Mr. KEIGWIN.—We offer here a certified copy of the articles of incorporation of the Barber Lumber Company under the hand and seal of the Secretary of State of Idaho, and ask that the same be given a proper exhibit number.

(Marked Plaintiff's Exhibit No. 326.)

Mr. KEIGWIN.—We desire to ask Mr. Bundy whether he has filed with the clerk of this court the letters and other papers by him read into the record at Eau Claire, as exhibits in this case.

Mr. BUNDY.—If you will confine your inquiry to the clerk—of course you know in fact that I haven't,

and I am not going to.

Mr. KEIGWIN.—We made a request that they be produced. We request counsel for the defendant to produce and file with the clerk all the books, documents, papers, and records referred to in the depositions taken at Eau Claire, Wisconsin, in the testimony in this case.

Mr. BUNDY.—All the records, books, correspondence referred to in the depositions taken at Eau Claire which were offered in evidence were duly read into the record, and, subsequent to their introduction, all such books, papers, and documents were submitted to counsel for the complainant, pursuant to stipulation, were in their custody for their inspection for a period of three days. All of the letters, all of the correspondence, and all of the documents offered and received in evidence are set out at length in the depositions taken at Eau Claire, and for this reason, and for the further reason that criminal actions are pending against Mr. Barber and Mr. Moon, in which actions these documents, books, and correspondence will be extremely important for their safety, the defendants will not produce them, other than the same appears in the depositions, and would not feel safe in producing them in court or placing them on file in this court, in view of the pending criminal action.

Mr. KEIGWIN.—You mean the criminal action against Messrs. Barber and Moon, relating to these same transactions?

Mr. BUNDY.—Yes, sir.

Mr. KEIGWIN.—Then we will ask counsel for

the defendant whether he has any advice as to when the testimony taken at Eau Claire will be transcribed and filed here.

Mr. BUNDY.—I have not, except that I expect it every day; it should have been here before this; we are expecting it in every mail.

Mr. KEIGWIN.—Swear Mr. McClain.

[Testimony of C. W. McClain, on Behalf of the Complainant.]

C. W. McCLAIN, sworn as a witness on behalf of the complainant, testified as follows on

Direct Examination.

(By Mr. KEIGWIN.)

Q. Mr. McClain, you are the stenographer who has been engaged in the taking of the testimony throughout the examination of witnesses in this case, are you not?

A. Yes, sir—the testimony taken here in Boise.

Q. Do you remember at what date the examination of witnesses at Boise was suspended at the time Mr. Gordon, Mr. Bundy and I left Boise and started on the circuit? A. No, sir, I don't remember.

Q. That fact appears in your record to be the 11th of March, 1909.

A. Well, whatever is in the record would be correct.

Q. At the time that the testimony here was suspended how much of the testimony had you transcribed?

A. As near as I recollect now, about four hundred pages, although I wouldn't be sure as to the

(Testimony of C. W. McClain.)

exact amount.

Q. The first four hundred pages of the testimony? A. Yes.

Q. During the time that the testimony was taken at Boise, the usual hours of session were from ten to twelve in the morning and from two to five in the afternoon, were they not?

A. Well, from ten till twelve in the morning and from two till between four and five in the afternoon, usually.

Q. Were you able during that period to transcribe all the testimony as we went along?

A. No, sir.

Q. Do you know how much of this testimony had been transcribed and delivered to Mr. Gordon before Mr. Gordon and I returned to Boise on the 26th of May?

A. I think something over 1800 pages, although I am not sure—it may have been something about 2300.

Q. Do you know whether all of that was delivered to Mr. Gordon?

A. I was informed that something like 250 pages—what I sent last—didn't reach him until after his return here.

Q. That was returned from Chicago?

A. Yes, sir.

Q. Do you remember when your transcripts were delivered to Mr. Bundy?

A. Well, Mr. Bundy hasn't all as yet that I have transcribed; I think four volumes were delivered to

(Testimony of C. W. McClain.)

him about a week or so ago, as I remember.

Q. Was that the first that you had delivered to him?

A. No, I had handed to Mr. Wells, at his request, a copy of the transcript of the testimony of Mr. Downs and Mr. Blake, soon after you left here on this circuit, Mr. Wells informing me that Mr. Bundy wished this; and the remainder was not handed to Mr. Bundy until after his return here.

Mr. BUNDY.—I got back here two weeks ago to-day.

A. Yes, I guess it was about two weeks ago.

Mr. KEIGWIN.—Q. Have you finished the transcription of all the testimony taken in this case?

A. All except what has been taken to-day.

Q. Have you delivered to Mr. Gordon and me the testimony taken at the last session?

A. No, sir.

Q. When was it finished?

A. It was finished the day it was taken here.

Q. But not yet delivered? A. No, sir.

Cross-examination.

(By Mr. BUNDY.)

Q. Have they asked you for it? A. No, sir.

Q. We suspended about last Thursday. Have you finished writing up what evidence we had then on that day, Mr. McClain? A. Yes, sir.

Q. That evidence hasn't been asked for by the Government up to now? A. No, sir.

Q. Mr. McClain, your office is in this building?

A. Yes, sir.

(Testimony of C. W. McClain.)

Q. Have you had occasion to know or observe the number of assistants that Mr. Keigwin and Mr. Gordon have working in the rooms upstairs, and if so, how many?

A. I have noticed three.

Q. Besides Mr. Keigwin and Mr. Gordon?

A. Yes, sir.

Q. The evidence that you gave Mr. Wells at my request shortly after we left here last March was probably less than 100 of the 3000 pages that are now up, or nearly that, wasn't it, Mr. McClain?

A. If I remember right, it was about 32 pages.

Q. And the balance of the 3000 pages has been given me since I came here two weeks ago?

A. Yes, sir, all except the last volume—I don't know just how many pages there are in that.

Q. I haven't got that yet, have I?

A. No, sir,

(Witness excused.)

Mr. KEIGWIN.—Counsel for complainant are unable to close their case this afternoon, by reason of the fact that the testimony has not yet been completed, and that the testimony taken at Eau Claire has not yet been received, and by reason of the fact that they desire to examine some of the papers offered there at Eau Claire, so that we will take an indefinite adjournment, and apply to the Examiner for another session upon notice given.

Mr. BUNDY.—We had this same matter before Judge Dietrich on last Thursday. These gentlemen then asked until Monday, and asked for time until the evidence taken on the part of the defense could

be filed here. Judge Dietrich specifically ruled that he would give them until the close of business to-night, Monday, June 14th, to enable them to get their mail-bag, which they said had been lost. He specifically ruled and stated that he would not extend their time waiting for the evidence on the part of the defense to be filed, and that the time for the complainant to close its evidence would expire to-day, June 14th, the time having long since expired except by order of Court. We therefore ask the Commissioner to adjourn this hearing permanently and for good, pursuant to the order of Judge Dietrich.

The EXAMINER.—If this statement is correct, isn't it true that if any further testimony should be taken the Court will exclude it from the hearing?

Mr. BUNDY.—We will not participate in any further hearing here; we are through.

The EXAMINER.—Is this statement of Mr. Bundy's correct?

Mr. KEIGWIN.—If the Court please, it is true that an application was made to Judge Dietrich on the day Mr. Bundy mentions, and extension of time to take testimony in the case was asked; it is true that one of the grounds assigned for that proposed extension was the fact that a mail-sack containing a large volume of papers necessary for the perfection of complainant's case had been lost in the mails, and that we were advised at that time that it might be expected in a day or two; it is true that Judge Dietrich said that he would not think, or he said that he was not disposed to give an extension of time for the purpose of allowing the transcript of the testi-

mony taken at Eau Claire to be transmitted here, and that he would place the extension, which he granted, upon the ground that it seemed to be made necessary upon the showing made to him in respect of the loss of this mail-sack. Now, I do not know whether or not Judge Dietrich intended that as a final and definite judgment on the question, but whether he did or whether he did not, we think that, upon the showing made here, we are in a position to ask Judge Dietrich to review himself, and so we will ask for an adjournment this afternoon of this hearing, to be resumed at such time in the future, depending upon the receipt of the testimony from Eau Claire and upon the production of the other documents requested of defendants' counsel.

The EXAMINER.—I think it is proper for me to adjourn, but under the conditions, I think it would be proper for the plaintiff to get the permission of the Court to take further testimony. Judge Dietrich can give them further time if he sees fit to; I can't agree, under the conditions, to take further testimony without the direction of the Court.

Mr. BUNDY.—We should now adjourn, and if they want to reopen the case later, let them do so.

Mr. KEIGWIN.—Do you want to adjourn before we close?

The EXAMINER.—I think it is proper for me to adjourn to-night. I have got to examine this matter and make up my report. I will await the order of the Court to take further testimony, Mr. Keigwin; I don't think it is proper for me to proceed against the direction or request of the Court.

Mr. BUNDY.—There was an express order made, because we couldn't stipulate it; Judge Dietrich called in Mr. McClain and dictated the order himself. He was first disposed to adjourn the evidence and then gave them until to-day. We are not disposed to participate in any further testimony, without an order of the Court.

The EXAMINER.—I will submit to the order of the Court with reference to the matter.

Mr. KEIGWIN.—The record then will show that we are unprepared to go further this evening, having exhausted all the material at present in our hands.

The EXAMINER.—I propose to adjourn; I will receive the direction of the Court, whatever that may be.

Mr. KEIGWIN.—We wish the record to show that we are unable to proceed further this evening—

The EXAMINER.—Suppose we should adjourn it until another day; I will permit the parties to this suit to get an order of the Court to take further testimony, if they want to; under the conditions, I think that is proper for me to do.

Mr. KEIGWIN.—We want the record to show that we are unable to proceed further this afternoon, by reason of the fact that we have exhausted the material in our hands, but we are not prepared to close our case, for the reason that we desire to examine the testimony taken at Eau Claire, with the view to the offering of evidence in rebuttal of that, upon a closer examination of that testimony.

The EXAMINER.—Under the conditions, I think it is proper for me to adjourn without day; as a mat-

ter of course, the Court can direct me to do anything, and whatever the Court directs me to do, I will endeavor to do.

Mr. BUNDY.—That is all anybody can do. You can simply adjourn it without day. The order will be adjourned without delay.

The EXAMINER.—I am not adjourning to any particular time; I am simply adjourning without day.

Mr. KEIGWIN.—Then the request of complainant is denied?

The EXAMINER.—I think it is not proper for me to go against the order of the Court.

5:50 P. M.

State of Idaho,
County of Ada,—ss.

I, John T. Morgan, Spécial Examiner appointed by the Court to take evidence in the City of Boise, in the above-entitled action, do hereby certify that the witnesses named in the foregoing transcript, consisting of pages 1 to 2904, inclusive, attended before me, and that each of such witnesses were duly sworn to testify to the truth, the whole truth, and nothing but the truth, and in response to oral interrogatories testified as more fully appears from the foregoing transcript, which transcript, together with the exhibits therein referred to, contains all of the evidence so taken before me on behalf of the complainant, and all of the stipulations made, and objections and other proceedings had and taken before me on the trial of

said cause, while taking such evidence.

Dated June 19, 1909.

JOHN T. MORGAN,
Special Examiner.

Filed June 19, 1909. A. L. Richardson, Clerk.

*In the Circuit Court of the United States, for the
District of Idaho.*

THE UNITED STATES OF AMERICA,
Complainant,

vs.

THE BARBER LUMBER COMPANY et al.,
Defendants.

[Proceedings Had March 13, 1909.]

Seattle, Washington, March 13, 1909.

Met pursuant to stipulation entered of record in the above-entitled cause, counsel having been delayed in arrival at Seattle, at the office of the Court Reporting Company, at 422 Colman Building, in the said city, there being present Arthur D. Williams, Special Examiner, appointed by the Court; Messrs. Peyton Gordon and Charles A. Keigwin, Special Assistants to the Attorney General, appearing for the complainant, and Mr. Charles T. Bundy appearing for the defendant, The Barber Lumber Company.

Whereupon Arthur E. Brookhart was produced as a witness for and on behalf of the complainant, who being duly sworn, testified as follows:

[Testimony of Arthur E. Brookhart, on Behalf of the Complainant.]

ARTHUR E. BROOKHART, a witness called for and on behalf of the complainant, United States of America, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Arthur E. Brookhart?

A. Yes, sir.

Q. Where do you reside, Mr. Brookhart?

A. Tacoma, Washington.

Q. How long have you resided at Tacoma?

A. Since September, 1908.

Q. How old are you? A. Twenty-eight.

Q. What was your occupation in January, 1902?

A. I was a teamster.

Q. Employed as teamster where?

A. In Boise.

Q. And what were your wages at that time as teamster?

A. I don't know as I could just state what they were.

Q. You took up a claim under the Timber and Stone Act of 1902, did you? A. Yes, sir.

Q. At the Boise land office, Idaho?

A. Yes.

Q. I show you timber and stone land sworn statement, dated January 14, 1902, signed by Arthur E.

(Testimony of Arthur E. Brookhart.)

Brookhart, and ask you if you signed that and filed the same in the land office at Boise? A. I did.

Q. And the non-mineral affidavit of Arthur E. Brookhart, same date, did you sign that and file it in the land office at Boise? A. Yes, sir.

Q. I show you the testimony of Arthur E. Brookhart, taken on final proof, dated April 8, 1902, and ask if you signed that? A. Yes, sir.

Q. I show you deed dated September 15, 1903, by Arthur W. Brookhart and Anna Brookhart, to A. E. Palmer, and ask you if that is your signature to that?

A. Yes, sir.

Q. And that's your wife's signature?

A. That's my wife's.

Q. You acknowledged the same before L. M. Pritchard? A. Yes, sir.

Q. Did your wife take a timber claim, Mr. Brookhart? A. No, sir.

Q. Mr. Brookhart, who first spoke to you about taking up the timber claim?

A. Well, I am sure I can't say. I can't say who spoke to me first about it. It was talked among the—several of us boys.

Q. Who did you work with at that time?

A. I worked for M. S. Stevenson.

Q. And what is Mr. Stevenson's first name?

A. Martin. He goes by the name of Tom, but I suppose it would be M. S. That is the way he always signed it.

Q. Do you know where he is now?

A. He is in Nevada somewhere, Fallon, Nevada.

(Testimony of Arthur E. Brookhart.)

Q. Who located you on the timber claim that you entered? A. Pat Downs.

Q. Well, with whom did you go to see Mr. Downs?

A. Well, there was I think sixteen of us in the—

Q. Party? A. Yes, sir.

Q. Do you know who they were?

A. Well, I know a part of them.

Q. Name those that you can.

A. There was M. S. Stevenson and Mrs. Stevenson.

Q. His wife?

A. His wife. James Baker. William Roberts. And the rest of the party I cannot recall.

Q. Who arranged for this party to go?

A. I cannot say.

Q. Where did you meet the others of the party?

A. Well, we did not exactly meet them, but then we overtook them on the road, but then we at one time agreed on Placerville, Idaho, but there was not any meeting.

Q. Where did you start from Boise, what place?

A. From the Front Street Livery Stable.

Q. Who drove the team, do you remember?

A. I do not know.

Q. Did you pay anything for the team?

A. I think I did, yes, sir.

Q. Do you know how much it was?

A. No, I am sure I can't say.

Q. Did you know Mr. John I. Wells before you located on this land? A. No, sir.

Q. Had you ever met him? A. No, sir.

(Testimony of Arthur E. Brookhart.)

Q. Do you know him now? A. Yes, sir.

Q. How long after you entered the land did you first meet Mr. Wells? A. I cannot say.

Q. Well, I will ask you if you did not meet Mr. Wells before you went to the land office and did not Mr. Wells draw your filing papers?

A. Mr. Wells?

Q. Yes. A. I believe he did.

Q. And did you have any talk with Mr. Downs about paying him a location fee? A. No, sir.

Q. Did you ever pay him a locating fee?

A. I think we did.

Q. Well, do you know whether you did or not?

A. Yes, sir, we paid him \$25.00.

Q. When?

A. Well, now, I cannot say because my father paid him the money and I cannot say when it was paid, but I did not pay him at the time of the location.

Q. You did not pay him yourself?

A. No, sir; I did not.

Q. And you say you went to Placerville?

A. Placerville.

Q. Did you know of any market for this timber when you located? A. No, sir.

Q. Did you know of any person who was buying timber claims? A. No, sir.

Q. Did you know of any person who was selling timber claims? A. No, sir.

Q. Did you have the money with which to purchase the timber claim when you entered?

(Testimony of Arthur E. Brookhart.)

A. At the present time?

Q. At the time you entered the claim.

A. No, sir.

Mr. BUNDY.—That means at the time you filed on it?

A. You mean the whole or full amount?

Q. I mean did you have—

A. Or did I have the money laid away?

Q. I mean did you have enough money with which to purchase a timber claim when you filed on it?

A. Full amount, no.

Q. I mean the time you first went to the land office? A. No, sir.

Q. Mr. Brookhart, do you remember what the weather was when you was up *that at* Placerville to go over this claim? A. What the weather was?

Q. Yes. A. I can't say about the weather.

Q. Was there any snow on the ground?

A. Some snow, yes, sir.

Q. How deep was it?

A. Well, sir, I can't say. We went through with a rig.

Q. Did you go out to the claim with a rig?

A. No, we walked to the claim.

Q. Did you walk all over your claim?

A. Well, I don't know as I walked—I supposed to every corner of it, the man who located us showed us the corners.

Q. And did Mr. Downs take you out to a claim and show you a claim and say, "This is the one you are to locate on"?

(Testimony of Arthur E. Brookhart.)

A. Well, now, if I remember right, Mr. Downs did not go with us. He told us where to get off, and what—by being through the country he told us where to go and he went with the other party. Told us where we went and the other party the other.

Q. The rest of you went alone?

A. The rest of us went alone.

Q. Who showed you your claim?

A. Well, I don't know. We just picked it out. There was three of us in the party?

Q. Who were the three?

A. Or four, rather.

Q. Who were the four, three that were with you?

A. Mr. and Mrs. Stevenson?

Q. And another one?

A. Yes, I can't remember.

Q. How did you see a claim on your way home?

A. Yes, sir.

Q. And Mr. Downs gave you the numbers of claims, did he?

A. Yes, sir; description of it.

Q. And the other three the same?

A. Yes, sir.

Q. And was there any person in the party with you that was competent to show you from the numbers where the claim was?

A. No, sir; only this man Mr. Stevenson was freighter at that time and Mr. Downs told him about where they were, where the corners were.

Q. You left Downs at Placerville, did you?

A. Placerville, yes, sir.

(Testimony of Arthur E. Brookhart.)

Q. And how far from Placerville did you find your claim? A. Well, I could not say.

Q. Well, as near as you can remember; wasn't two or three miles?

A. Yes, it was. It was about, it was five miles.

Q. And that was on your way back to Boise?

A. Yes, sir.

Q. And were the claims right alongside the road?

A. It was on Sumner's Creek or Henry's Creek, I forget.

Q. And were they right alongside of the road that you drove over coming back?

A. Yes, sir.

Q. Or did you all get off from the road?

A. Well, we went into this creek and we just got out there and walked over that land.

Q. How far over the land did you get?

A. Well, we did not get over a quarter of a mile.

Q. Did you all go together?

A. Well, yes.

Q. How long were you looking over this claim?

A. It was not very long.

Q. Ten minutes?

A. Oh, *probably than* that, but I don't think longer.

Q. Were did Mr. Downs tell you to take those numbers that he gave you? What did he tell you to do with them?

A. Take the numbers?

Q. The numbers he gave you, descriptions of the property; did he tell you what to do with them?

(Testimony of Arthur E. Brookhart.)

A. Not, at the time, no.

Q. Where did you take them?

A. Oh, I—I am sure I can't say.

Q. How's that? A. I can't say.

Q. Well, did the other three return to Boise with you? A. Yes, sir.

Q. And did you all go to the same place to have your papers made out? A. Yes.

Q. And where was that?

A. I think we went to Wells.

Q. And had you ever met Mr. Wells before?

A. I don't think I had.

Q. And how did you find out where Mr. Wells was? A. Well, some of the party.

Q. Well, was Mr. Stevenson conducting this party?

A. Well, he seemed to know more about it than anybody else, I don't know.

Q. Did Mr. Wells go to the land office with you?

A. I think not.

Q. Did he charge you anything for preparing your papers? A. No, sir.

Q. Didn't you and Mr. Stevenson or Mrs. Stevenson and the other man and woman that was in your party go to the land office together?

A. I think we did.

Q. Did you go to Mr. Wells' office together?

A. I think not.

Q. Who took you up to Mr. Wells' office?

A. Well, I might have went with Mr. Stevenson but I don't think we went all together. I might

(Testimony of Arthur E. Brookhart.)

have went with Stevenson.

Q. Do you know Charles Wilmot?

A. Yes, sir.

Q. Was he with the party?

A. He was in the party, yes, sir.

Q. And Fred McBurney?

A. Yes, sir.

Q. Did they go to Mr. Wells' office with you?

You don't remember?

A. No, I do not.

Q. You say you did not pay the locating fee yourself? That your father paid it?

A. My father paid it.

Q. And you don't remember whether he paid Downs or Wells do you? A. I can't say; no.

Q. Where is your father now?

A. He is in Boise, Idaho or Eagle, Idaho.

Q. What is your father's name?

A. J. F.

Q. Did he take up a timber claim?

A. No, sir.

Q. Do you know how much you first paid at the land office, the day you filed your papers?

A. Something like \$410.00.

Q. No, I mean the first time you filed your papers. A. Oh, when I filed; \$7.50.

Q. Was that your own money or did you get it from somebody else?

A. That was my own money.

Q. And do you remember the occasion that you made your final proof and paid this four hundred

(Testimony of Arthur E. Brookhart.)

and some odd dollars in the land office—four hundred dollars?

A. Yes, sir.

Q. Had you learned of anyone between the time you filed and the time you made your final proof, that was purchasing timber claims?

A. No, sir.

Q. Did you know of anyone that was selling timber claims at that time?

A. At that time? No, I did not.

Q. What did you expect to do with your timber claim?

A. Well, I expected to sell it when I got proved up on it.

Q. Who did you expect to sell it to?

A. I did not know.

Q. Had you seen John I. Wells between the time he drew these papers for you and the time that you made your final proof?

A. I think I had, yes.

Q. Had you talked with him about this land?

A. No, sir. I might have spoken in a way. I don't think there was anything ever said in regards to it, only in a general way.

Q. Did he come to see you?

A. No, sir.

Q. Just met him casually?

A. Yes, sir.

Q. You never went to see him after that?

A. Once afterwards, yes, sir.

Q. Just before you made final proof?

A. No, sir, that is, I went with another party; I went to see John I. Wells at that time.

Q. Who was this other party?

(Testimony of Arthur E. Brookhart.)

A. Why it was Mr. and Mrs. Thurman, Fred Thurman.

Q. And his wife, named Lola Thurman?

A. Lola.

Q. How did you happen to take them to see Mr. Wells?

A. Because Mrs. Thurman is my wife's sister.

Q. Mrs. Thurman is what?

A. Is my wife's sister.

Q. What did you take her there for?

A. Why to take up some timber claims.

Q. Where did you get the money with which you made your final proof?

A. Where did I get it? My father gave it to me.

Q. Where did he get it?

A. I am sure I can't say. He got it from John Wells or Pat Downs.

Q. Did he tell you he got it from one of them?

A. He never said.

Q. Did you know whether or not your father had the money of his own to advance money for the timber claims?

A. Well, I don't know as I—no.

Q. You know he did not, did you?

A. Well, I don't know how much he had.

Q. Now when did you first learn you were going to get the money to buy this timber claim?

A. When did I first learn?

Q. Yes.

A. Well, before I took up—I did not know where

(Testimony of Arthur E. Brookhart.)

it was coming from but I knew I would get some.

Q. Who told you you could get it?

A. Well, I can't say. I don't remember the name of the party, but then it was general talk.

Q. Why didn't you go to Mr. Wells yourself to see about getting this money?

A. Well, I was working at the time and my father—

Q. Speak so that gentlemen can hear you.

A. All right. At the time I was working and when I got my final receipt, not final receipt, but when I had notice to come and prove up, my father brought me the money.

Q. Had you said anything to him about the money before that? A. No, sir.

Q. And you took this money and went to the land office and paid it in and then they gave you a receipt for it? A. Yes, sir.

Q. And what did you do with that receipt the day you received it?

A. The day I received it?

Q. Yes.

A. I don't know whether I signed it over or—if not that day. It was a few days afterwards.

Q. Who did you sign it over to?

A. I don't remember.

Q. Where did you go to sign it over?

A. In the Sonna Block, to Mr. Pritchard.

Q. And when you signed it over to him, did he give you any money? A. Yes, sir.

Q. How much? A. \$238.00.

(Testimony of Arthur E. Brookhart.)

Q. And did you sign a deed that day?

A. No, sir.

Q. Well, now, you made your final proof in August 26, 1902. Now state as near as you can how long after that it was you went to Pritchard's office; was it within a week?

A. I guess it was. It might have been the same day.

Q. And you are sure it was not more than two or three days or a week?

A. When I signed over the final receipt?

Q. Yes. A. No, sir.

Q. Now, who told you to go to Pritchard's office?

A. I don't remember.

Q. You know you didn't go there of your own volition? A. No; no, sir.

Q. Or at your own suggestion? A. No.

Q. And you did not know Mr. L. M. Pritchard prior to that time, did you?

A. Well, at sight, is all.

Q. Did you know Mr. Kinkaid at that time?

A. No, sir.

Q. The day that you went there, I forget whether I asked you whether or not you signed the deed?

A. No, I signed the final receipt that day.

Mr. KEIGWIN.—Do you mean that when you went there to Mr. Pritchard's office you merely left your receipt with him, or at the same time you signed your deed?

A. No, sir, I just gave him the receipt, final receipt.

(Testimony of Arthur E. Brookhart.)

Q. Didn't put any writing on it?

A. No, sir.

Q. (By Mr. GORDON, Continuing.) Then what paper did you sign when you went there on that occasion, any?

A. I don't remember of signing any, unless I signed the final receipt.

Q. Well, do you know that subsequently to that you did sign a deed; now was there anything said at the time you got the \$238.00 about a deed?

A. No, sir.

Q. Well, who notified you that you were to sign a deed? A. Pritchards.

Q. Did he come to see you?

A. Yes, sir.

Q. Where did he come to see you?

A. At 12th and Main, Boise.

Q. Was that where you were working?

A. That is where I was living at the time.

Q. And did he bring a deed to you?

A. Yes, sir.

Q. How long is that after you left with him the final receipt?

A. Must be about a year, one year.

Q. Well, now, did you ever sign more than one deed? A. No, sir.

Q. Do you remember the month that you signed that deed; was it in the spring, or summer or fall?

A. No, I do not.

Q. Did he pay you any more money when you signed the deed? A. No, sir.

(Testimony of Arthur E. Brookhart.)

Q. Well, what did he say to you when he came with the deed and wanted you to sign it?

A. He brought the deed and said that here is the deed, said, just sign the deed, just asked me to sign the deed over to him, and I did.

Q. Well, now, before you filed on this land, did you understand how much you were going to get out of it? A. No, sir.

Q. When you went to Mr. Pritchard's office and he gave you \$238.00, what was said about money on that occasion?

A. Well, all I knew about it, was the rest of them, that's all they were getting out of it, you see.

Q. And did he say anything about the \$400.00 that had been advanced you? A. No, sir.

Q. You did not pay your father any \$400.00 back, did you?

A. Well, no, I never paid him.

Q. Did you ever pay anybody the \$400.00 back that was advanced or loaned to pay for this property? A. No, sir.

Q. Did anyone ever ask you to pay it back?

A. No, sir.

Q. Now who were the others that you said that got the same amount that you did?

A. All that I know is that each party got \$238.00 or \$240.00.

Mr. BUNDY.—I object to that as incompetent, irrelevant, immaterial, and hearsay unless he states he knows personally as to that.

Q. I ask you if you know? A. No, sir.

(Testimony of Arthur E. Brookhart.)

Q. (By Mr. BUNDY.) You don't know anything about it yourself, do you? A. No, sir.

Q. Only what you have heard?

A. Only what I have heard. Some got \$240.00 and some \$238.00, but either one I can't say.

Q. (By Mr. BUNDY.) Do you know anything about that except what you have been told?

A. No.

Q. (By Mr. BUNDY.) Whether it was paid?

A. No, sir.

Q. (By Mr. BUNDY.) You don't know anything about what anybody gave except what somebody told you?

A. Somebody told me.

Mr. BUNDY.—I ask that all this evidence relative to what other people said be stricken out as hearsay.

Q. Did you know who the grantor in the deed was that you signed? A. No, sir.

Q. Do you know whether you signed a deed in blank, or not? A. No, sir, I did not.

Q. Was the deed dated when you signed it?

A. I cannot say.

Q. Was your wife at home with you and signed the deed at the same time you did?

A. Yes, sir.

Q. You did not sign both names to the deed, did you? A. No, sir.

Q. Did you acknowledge the deed the same day that you signed it? A. Yes, sir.

Q. Do you remember whether or not Mr. Prit-

(Testimony of Arthur E. Brookhart.)

chard made any erasure in the date of the deed the day he brought it to you? A. No, sir.

Q. The deed is dated September 15, 1903. I will ask you as to whether or not you can state you signed that deed in March, 1903?

Mr. BUNDY.—We object to that. The deed is the best evidence of when it was signed.

A. I cannot say.

Q. I notice here in the acknowledgment that the word “March” has been erased and the word “September” written over it. Did you see that done, or don’t you know anything about it?

A. No, sir.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Arthur E. Brookhart, dated January 14, 1902. The non-mineral affidavit of the same date. The testimony given on final proof by Arthur E. Brookhart, April 8, 1902. All of which have been identified by the witness Arthur E. Brookhart as having been signed by him; the cross-examination of Arthur E. Brookhart on final proof. The receiver’s receipt.

Mr. BUNDY.—The defendants object to the introduction of the final proof papers or cross-examination on final proof for the reason that the same is incompetent, irrelevant and immaterial.

Mr. GORDON.—The receiver’s receipt, with register’s certificate dated August 26, 1902; with deed dated September 15, 1903, made by Arthur E. Brookhart and Anna Brookhart, his wife, to A. E. Palmer consideration \$925, which has been identified by

(Testimony of Arthur E. Brookhart.)

Arthur E. Brookhart as having been signed by himself and Anna, his wife, and acknowledged before L. M. Pritchard. The certified copy of the patent dated February 1, 1904. The testimony and cross-examination of the other witnesses given on final proof.

Mr. BUNDY.—Same objections as before given.

Mr. GORDON.—All to the southwest quarter of section thirty-five in township number seven north of range five east, Boise Meridian.

(All the papers as above mentioned attached together and marked by the Examiner, Complainant's Exhibit Brookhart 1.)

Q. Now, Mr. Brookhart, you have testified that you did not know of anyone that was buying this land. When did you first learn that someone was purchasing it, purchasing timber claims?

A. The party?

Q. No, when anybody was purchasing?

A. I can't say just when it was.

Q. Well, did you learn it before you went down there with your final receipt and got the \$238?

A. Yes, sir.

Q. Who told you?

A. I don't remember who told me.

Q. Did you know it when you made your final proof?

A. No, sir. There was somebody but who it was I did not know.

Q. You knew somebody was going to get yours?

A. Yes, sir.

(Testimony of Arthur E. Brookhart.)

Q. And you did not know who was to get it?

A. No, sir.

Q. When did you first learn that somebody was going to get yours?

A. Well, when I took it up.

Q. You knew it before you went up there to locate, didn't you?

A. I knew that I would have a chance to sell it to somebody. That was my understanding.

Q. Who gave you that understanding?

A. Well, it was merely talked. I didn't know who it was.

Q. Didn't your mother go up the same time you did to locate? A. No, sir.

Q. Did she go before or after? A. After.

Q. After you had sold or after you had filed?

A. After I had filed.

Q. Do you know who she went up with?

A. Yes, sir.

Q. Who? A. Mr. and Mrs. Thurman.

Q. Do you know where she got the money to make her final proof? A. No, I do not.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Brookhart, you say you are twenty-eight years old now? A. Yes, sir.

Q. So that you were just a little, if any, over twenty-one when you made your filing?

A. Twenty-one; yes, sir.

Q. Were you married at that time?

A. Yes, sir.

(Testimony of Arthur E. Brookhart.)

Q. And you say you were driving team for Mr. Stevenson? A. Yes, sir.

Q. And his business was that of a freighter?

A. Freightier, yes.

Q. And by freighter I understand is a man who teams on the road hauling freight from Boise up into the mining country and camps up there?

A. Well, at that time when I was employed by him, he was.

Q. You were up in that country a great deal?

A. Yes, sir.

Q. And would meet a good many people going and coming, going and filing on timber claims?

A. Yes, sir.

Q. So you learned in that way that the timber was being entered? A. Yes, sir.

Q. And that people were filing upon it?

A. Yes, sir.

Q. And you can't recall who were the very first ones that spoke of it? A. No.

Q. But it was a matter of common talk around Boise that there was timber up there which could be entered and people were entering it?

A. Yes, sir.

Q. And that was what suggested the idea to you of exercising your right, was it? A. Yes, sir.

Q. Now, at the time you concluded that you would make a filing, you did not know John I. Wells?

A. No, sir; I don't think I did.

Q. Never had a talk with him on this subject?

A. No, sir.

(Testimony of Arthur E. Brookhart.)

Q. And you, of course, had had no talk with Mr. Pat Downs up to the time of starting up there?

A. Never seen Pat Downs.

Q. Never knew of him. And of course did not have any talk with Mr. Kinkaid about it?

A. No, sir.

Q. Or never did, did you? A. No, sir.

Q. And never had any talk with Mr. Pritchard?

A. No, sir.

Q. Nor with Mr. Barber or Moon?

A. No, sir.

Q. Or talked with Gov. Steunenberg?

A. No, sir.

Q. Nor Mr. Wren, or Mr. Palmer or Long, had you? A. No, sir.

Q. Or Mr. Sweet? A. No, sir.

Q. Then when you got ready to go up, some of you made up a party, hired a team and went up to see Pat Downs to be located? A. Yes, sir.

Q. And in that party I understand was Mr. and Mrs. Stevenson, yourself and somebody whose name you do not recall; is that right? A. Yes, sir.

Q. You each contributed your share of the expense of the trip, I take it.

Q. Including livery bill and whatever hotel bill there was up there? A. Yes, sir.

Q. And Mr. Downs gave you the necessary numbers of land. Mr. Stevenson, you say, was familiar with that country? A. Yes, sir.

Q. Had been through it enough so that he thought he could find his own corners and go upon the land

(Testimony of Arthur E. Brookhart.)

which Mr. Downs had given him a description of, had he?

A. Yes, sir; we left it to him or the party left it to him because he had been over that country and camped on the ground, so he related, many times.

Q. So Mr. Downs simply gave Mr. Stevenson the numbers of three claims and you went with Mr. Stevenson and found the corners? A. Yes, sir.

Q. And then from those corners you went into the claim you were about to take?

A. Well, I don't know just on every corner.

Q. Don't know, but you went on it?

A. Yes, sir.

Q. Went on it enough so that you knew it was timber land? A. Yes, sir.

Q. And saw it was not inhabited?

A. Yes, sir.

Q. Made the usual examination, I suppose, enough so you can testify. Then you returned to Boise in the same crowd, same party, did you?

A. Yes, sir.

Q. Now, Mr. Downs gave you the numbers himself or did he give them all in one list to Mr. Stevenson?

A. I think he gave the descriptions all in one list.

Q. To Mr. Stevenson?

A. To Mr. Stevenson.

Q. And you don't know whether he instructed Mr. Stevenson to go to Wells or not, do you?

A. No, I do not.

Q. But in any event Mr. Stevenson or somebody

(Testimony of Arthur E. Brookhart.)

told you that was what you were to do?

A. Yes, sir.

Q. And after you arrived in Boise a day or two afterwards, you did go to Mr. Wells, did you?

A. Yes, sir.

Q. And did he make out the filing papers for you?

A. I think he did.

Q. Did you go down to the land office and get the blanks and bring them back to him?

A. Why, I think he had them there.

Q. And after you had filing papers made out you went to the land office, did you?

A. Yes, sir.

Q. And then you had to pay a filing fee and, I believe, publication fee, making it about \$7.50, all together?

A. \$7.50.

Q. You paid that, did you?

A. Yes, sir.

Q. And made an entry upon that land?

A. Yes, sir.

Q. Now, Mr. Brookhart, up to that time, up to the time you filed your first papers, had you ever had any talk with any person that I have named or anyone else or had you entered into any agreement at that time of any kind, written or oral, express or implied, by which you had contracted or obligated yourself to turn over the deed you might get to any person whatever?

A. Not in the least.

Q. At that time had you any knowledge who you were going to sell this to or for what price or when?

A. No, sir.

Q. Had you, at that time, any knowledge of selling other than that the general talk that there would

(Testimony of Arthur E. Brookhart.)

be a market for these and that in due course of time you probably would be able to sell it; there was such talk as that, I suppose? A. Yes.

Q. None other than this general talk?

A. No, sir.

Q. That you believe there would be a market at some time with somebody. Had you any idea who you were going to sell it to or when?

A. No, sir.

Q. Now, in this first paper you filed at the land office, Mr. Brookhart, which is entitled your timber and stone lands sworn statement and which is dated January 14, 1902, you said, among other things, this: "I have not directly, or indirectly, made any agreement or contract or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That statement was absolutely true when you made it, was it not, Mr. Brookhart? A. It was, yes, sir.

Q. So, at that time, you had no such agreement with any person? A. No, sir.

Q. Now you said at the time you originally filed upon this land, you did not have all of the money that was required to pay up; did you have some money at that time?

A. Well, I had a note for a hundred and sixty-five dollars.

Q. At the time that you filed upon the land. Did you expect to rely on the note and borrowing the bal-

(Testimony of Arthur E. Brookhart.)

ance from somebody to prove up?

A. Well, I don't know as I had any intention just how I was going to get it.

Q. But you knew you had to raise it some way?

A. Yes.

Q. But at the time you filed you had made no arrangement with anybody to get the money?

A. No, sir.

Q. But you simply filed with the expectation that before the final proof you would arrange some way to get the money?

A. Yes, sir.

Q. Now, you said your father gave you money on which you made final proof and you said that you suppose he got it—or did he get it from John I. Wells or Pat Downs; did your father ever tell you that much?

A. Well, I don't know as he did, but then I always had the understanding that it was to be one of those men.

Q. It was your understanding? A. Yes.

Q. That John I. Wells had made the advancement upon the purchase price of that land; that is, you knew he had advanced the money to a great many different people, did you?

A. Yes.

Q. But you did not have any talk with Mr. Wells about that?

A. No, sir.

Q. And you don't know what, if any, arrangements your father made?

A. No, sir.

Q. But you understood at the time you got the money from your father that John I. Wells had advanced \$412.50, whatever it was?

(Testimony of Arthur E. Brookhart.)

A. Yes, sir; that was my impression.

Q. And at the time you sold and was paid \$238.00, you understood that that was in addition to the \$412.00 that had already been paid to you?

A. Yes, sir.

Q. And that you were getting \$650.00, which would be the sum of \$412.00 and \$238.00?

A. Yes, sir.

Q. And that was the understanding there then. \$650.00 was what was being paid for claims at that time, wasn't it?

A. Yes, sir; that was about the price.

Q. So, that after you got your final receipt and took it to Mr. Pritchard and was paid \$238.00, it was your understanding that that was the amount due you on the fund of \$650.00 after the \$412.00, which had been advanced, had been taken out?

A. Yes, sir.

Q. And that was the deal that was made as you understand, was it?

A. Yes, sir.

Q. Now, at the time you filed, I believe they had not began buying then, I suppose you did not know what price they were going to pay?

A. No, sir; I did not.

Q. There was not any fixed prices for claims in 1902, at the time you made your filing?

A. No, sir.

Q. Now at the time your father turned over to you the money which he had borrowed from Mr. Wells, did he tell you then that he had entered into any kind of an agreement acting for you by which

(Testimony of Arthur E. Brookhart.)

you had to sell this land, or had sold it?

A. No, sir.

Q. Was anything said at that time by your father or by anyone else that obligated you to sell that land to John I. Wells, or anybody else? A. No, sir.

Q. At the time you paid that money into the land office and made your final proof, Mr. Brookhart, had you then entered into any kind of an agreement, express or implied, written or oral, with any person, firm or corporation by which you had obligated yourself to turn this land over when you got title to any person? A. No, sir.

Q. At the time you made your final proof and got your final receipt, was there any reason why you could not have sold this to any person else provided you paid back Wells' \$412.50 that he had loaned?

A. No, sir.

Q. And the only reason you did not do it was because \$650.00 was the price that was being paid and the only market you knew at that time, was it not?

A. That's all.

Q. You did not know where you could sell it for any more? A. No, sir.

Q. If you had known of any place where you could have sold it for any more, were you under any obligations of any kind which would have prevented you from selling it where you could get more?

A. I surely would have sold it.

Q. Now, your attention has been called to final receipt which is dated August 26, 1902, and which I show you, signed Edward D. Garrett, Receiver, ac-

(Testimony of Arthur E. Brookhart.)

knowledging receipt of \$400.00. That is the identical paper which you turned over to Mr. Pritchard at the time you got the \$238.00, is it not?

A. Well, I don't remember whether that is the same.

Q. Well it is the final receipt you turned over?

A. It is the final receipt, yes, sir.

Q. (By Mr. KEIGWIN.) Well the only final receipt you ever had?

A. Yes, that is the only one.

Q. So, at the time you turned over the final receipt to Mr. Pritchard and he gave you the \$238.00, being the balance that was due you on the price of the claim, for which they were selling them, you did not make a deed then?

A. At that time?

Q. Yes. A. No, sir.

Q. And the deed shown here is dated something about a year afterwards and at the time you made that deed you were not paid anything in addition?

A. No, sir.

Q. But Mr. Pritchard told you that in addition to turning over the final receipt he wanted the formal deed, did he?

A. Well, I don't know as there was anything said but I suppose there was.

Q. Well, I mean at the time he brought the deed to you he told you he wanted that deed to perfect the title which had already been sold?

A. Yes.

Q. You did not think you were selling it over again?

A. No.

Q. In making your final proof papers which you

(Testimony of Arthur E. Brookhart.)

swore to on the 8th day of April, 1902, this question was asked you: "Have you sold or transferred your claims of this land since making your sworn statement or have you directly, or indirectly, made any agreement or contract in any way or manner with any person whomsoever by which the title which you may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except yourself," and you answered that "No." That answer was true and correct, was it not? A. Yes, sir.

Q. The next question was this: "Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person?" and you answered that "Yes." Is that answer true and correct?

A. Well, the way I understand that, if it was not for my benefit why I never would have taken it up.

Q. Of course you were making it for your own benefit? A. Yes, sir.

Q. You were not hired by anybody else to make that? A. No, sir.

Q. You were not making it as the agent of John I. Wells? A. No, sir.

Q. Or as the agent of any other person?

A. No, sir.

Q. You were not making it as the servant or employee of anybody else? A. No, sir.

Q. Perhaps you did not fully understand the question. I think your answer plain enough. "Question 14. Do you make this entry in good faith

(Testimony of Arthur E. Brookhart.)

for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person" and you answered, "Yes, sir." That answer is correct, is it? A. Yes, sir.

Q. The next question is this: "Question 15. Has any other person than yourself or has any firm, corporation or association any interest in the entry you are now making or in the land or in the timber thereof?" You answered that "No"; that answer was strictly correct, is it not? A. Yes, sir.

Q. Your father is a minister, is he?

A. Yes, sir.

Q. It is charged in the complaint in this action that we are trying, Mr. Brookhart, United States of America vs. Barber Lumber Company et al., that you filed upon this land at the request of and for the benefit of Barber Lumber Company, James T. Barber, Sumner G. Moon, John Kinkaid, Lewis M. Pritchard, A. E. Palmer and the other defendants; is that true or false? A. False.

Q. And it is further charged in this complaint that prior to the time you made your first filing upon this land, you entered into an agreement with the defendants in this action that you would make a filing at their request, and for their benefit and that you would thereafter go to the land office and testify to what you knew to be false for the purpose of defrauding the United States out of the land for the benefit of these defendants; is that true or false?

A. It is false.

Q. You entered this land, Mr. Brookhart, did you

(Testimony of Arthur E. Brookhart.)

not, simply because you believed that there would be a market for it at a price in excess of what it cost you and that you could make a profit for so doing and made the entry with the expectation of after you proved up you would sell it to whoever paid the most and you did not sell it until you got your final receipt and you turned it over to Mr. Pritchard and he paid you the \$238.00, did you? A. No, sir.

Q. And prior to the time you made that sale and was paid \$238.00, you never had had a word with anybody, had you, with reference to selling this property? A. No, sir.

Q. And had never offered it for sale, had you?

A. No, sir.

Q. And no one had offered to buy it?

A. No, sir.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Brookhart, did anyone talk with you before you made your final proof concerning the questions that would be asked you at the land office?

A. To what questions?

Q. (Question read.)

A. I don't know. There might have been some questions they had, yes.

Q. Who was it that talked with you about that?

A. I don't know. If I remember right, there was somebody might have said something to that effect, what they would ask.

Q. (By Mr. BUNDY.) That is, did anybody tell you what your answers should be?

(Testimony of Arthur E. Brookhart.)

A. No. No, sir.

Q. Do you know who it was went over the questions and asked you?

A. I don't think anybody went over the questions and asked me, no, sir. If they did, I don't remember.

Q. Mr. Brookhart, what was your father's name?

A. J. F.

Q. J. is for what? A. For Joshua.

Recross-examination.

(By Mr. BUNDY.)

Q. You understood that Mr. Downs and Wells were in partnership in the locating business at the time you went to Mr. Wells did you not; that is, it was generally understood they were?

A. Why, yes, sir.

Q. Engaged in the locating of people that went in there? A. Yes, sir.

Q. And were in partnership, as you understood it? A. Yes, sir.

Q. And you said something further, Mr. Brookhart, about you understood that all the people who went in there got about \$238.00 on their claims over and above what it cost them. I will ask you whether that was simply your understanding of what they were paying for claims, \$650.00 and the cost of \$412.00?

A. Well, what I meant by that, yes.

Q. You did not understand people were being hired and paid— A. No.

Q. —Simply \$238.00 for making an entry?

(Testimony of Arthur E. Brookhart.)

A. No, sir.

Q. But that people, as you understood it, were taking up these claims, and selling them at that price and therefore making that much profit?

A. Yes, sir.

(Signed) ARTHUR E. BROOKHART.

STIPULATION.

It is stipulated, by and between counsel for both parties, that the signature of this witness to the foregoing deposition shall be dispensed with, subject to the right of counsel for either party to recall the witness in case of any error discovered in the transcript of his testimony concerning the correction of which counsel cannot agree.

[Testimony of George S. Long, on Behalf of the Complainant.]

GEORGE S. LONG, a witness produced for and on behalf of the complainant, United States of America, being first duly sworn, testifies as follows:

STIPULATION.

It is stipulated that the witness, George S. Long, be sworn by Roy W. McReynolds, a Notary Public, in lieu of by the Examiner A. D. Williams, during his absence, and that the evidence of said George S. Long shall be filed and have the same force and effect as though the oath were administered by the Examiner duly appointed.

Direct Examination.

(By Mr. GORDON.)

Q. Your name is George S. Long?

(Testimony of George S. Long.)

A. Yes, sir.

Q. What is your occupation, Mr. Long?

A. I am the manager and resident agent of the Weyerhaeuser Timber Company.

Q. Where? A. Tacoma, Washington.

Q. And how long have you been so employed?

A. Since February, 1900.

Q. Do you know Mr. James T. Barber of Eau Claire, Wisconsin? A. Yes, sir.

Q. Is Mr. James T. Barber the president of the Barber Lumber Company? A. Yes, sir.

Q. How long have you known Mr. Barber?

A. I have known Mr. Barber since 1883.

Q. I show you a letter marked Complainant's Exhibit Long-A, purporting to be a letter written by James T. Barber, President, to Mr. George S. Long, dated November 13, 1903, and ask you if you received that letter from Mr. James T. Barber of the Barber Lumber Company? A. Yes, sir.

Q. You know Mr. Barber's signature, do you?

A. Yes, sir.

Q. And that is his signature to that letter?

A. Yes, sir.

Q. You received that letter through the United States mails?

Mr. BUNDY.—We will admit Mr. Barber wrote the letter and signed it and mailed it and sent it to Mr. Long.

A. Yes, sir.

Mr. BUNDY.—Signed by Mr. Barber and mailed to and received by Mr. Long.

(Testimony of George S. Long.)

Mr. GORDON.—I ask that this letter be copied into the record. The letter is,

“James T. Barber, President.

William Carson, Vice-President.

S. G. Moon, Secretary.

C. W. Lockwood, Treasurer.

BARBER LUMBER CO.,

Eau Claire, Wisconsin.

November, 13, 1903.

Mr. George S. Long,

Care Weyerhaeuser,

Tacoma, Washington.

Dear Sir:—

Exigencies have arisen which make it desirable to pass the title of certain lands in Idaho through some party entirely removed from association with the Barber Lumber Company, the circumstances being similar to those which made it desirable to use my name in connection with some of the Weyerhaeuser Timber Co.'s property. I have therefore taken the responsibility of directing the placing of the title to certain lands in you. As soon as the matter reaches a final adjustment, we will forward a quit claim deed to the property.

Trusting that you have no serious objections to this, and thanking you in advance, I remain, with kindest regards,

Very truly yours,

JAMES T. BARBER,

Prest.”

(Testimony of George S. Long.)

Q. Mr. Long, I will ask you if you replied to this letter which you just identified?

A. I think I did.

Q. You have not the original of that, have you?

A. No, sir.

Q. I will show you a letter marked Complainant's Exhibit Long-B, dated November 17, 1903, and addressed to Mr. James T. Barber, Eau Claire, Wisconsin, and signed George S. Long, and ask you whether that is a copy of the letter you wrote Mr. Barber? A. It is, yes, sir.

Q. And mailed that to him at Eau Claire, Wisconsin? A. To Eau Claire, yes, sir.

Mr. BUNDY.—And it was received by James T. Barber in regular course.

Mr. GORDON.—I read the letter, which the witness Long has identified:

“Tacoma, Wash., Nov. 17, 1903.

Mr. James T. Barber,

Eau Claire, Wisconsin.

Dear Sir:

Yours of the 13th inst. at hand, and it will be entirely agreeable to the writer to comply with your wishes in the matter of temporarily being custodian of some of your real estate in Idaho.

We recently had a visit from Messrs. Carson & Macartney of your company: who were out with Mr. Weyerhaeuser. We had a whole lot of wet weather to show them and various other things, but the wet

(Testimony of George S. Long.)

weather predominated.

With kind regards, I am,

Yours very truly,

GEO. S. LONG."

Q. Mr. Long, you know Mr. L. G. Chapman, the manager of the Barber Lumber Company?

A. Yes, sir.

Q. I show you letter marked Complainant's Exhibit Long-C, dated March 22, 1905, addressed to Mr. George S. Long, Tacoma, Washington, and signed L. G. Chapman, Manager, and ask you if you received that letter through the mail?

A. Yes, sir, I did.

Q. And that letter is signed by Mr. L. G. Chapman, the manager of the Barber Lumber Company, is it not?

A. Yes, sir.

Q. You replied to that letter shortly thereafter, did you?

A. I think so.

Q. You have not the original copy of that letter, have you?

A. No.

Q. I show you letter marked Complainant's Exhibit Long-D, dated March 27, 1905, addressed to Mr. L. G. Chapman, Boise, Idaho, and signed George S. Long, and ask you if that is a copy of the reply you sent Mr. Chapman?

A. Yes, sir, it is.

Mr. GORDON.—I read the letters just identified, the first being marked Complainant's Exhibit Long-C.

(Testimony of George S. Long.)

“James T. Barber, President.

William Carson, Vice-President.

S. G. Moon, Secretary.

C. W. Lockwood, Treasurer.

BARBER LUMBER CO.,

Eau Claire, Wisconsin.

March 22nd, 1905.

Mr. George S. Long,

Tacoma, Wash.

c/o Weyerhaeuser Timber Co.

Dear Sir:—

I am making up a quit claim deed running from you to the Barber Lumber Company and covering such lands as were purchased from entrymen, and deeds to which were taken in your name, but find that I have not Mrs. Long's name which I would like to have written into the same when originally made. If you will kindly give me this, I will have the deed made and forwarded to you at an early date for execution.

With kindest regards to yourself and Mrs. Long, I remain,

Yours truly,

L. G. CHAPMAN,

Manager.”

Mr. GORDON.—I now read the letter identified by the witness Long marked Complainant's Exhibit Long-D.:

(Testimony of George S. Long.)

“Tacoma, Washington, March, 27, 1905.

Mr. L. G. Chapman,
Boise, Idaho,

Dear Sir:

I have yours of the 27th inst., and beg to say that Mrs. Long's name is Carrie B. and if you make up the quit claim deed for such land as you may have purchased in my name, I will be glad to execute the same.

By-the-way, after you get to going in good shape, I am coming over to see you as I am especially interested in learning how successful you will be by running your planing mill by electricity, so I can recommend it to our people in building a similar planing mill. With kind regards,

Yours very truly,

GEORGE S. LONG.”

Q. Mr. Long, I show you letter marked Complainant's Exhibit Long-E on Barber Lumber Company paper dated April 5, 1905, addressed to George S. Long Tacoma, Washington, signed L. G. Chapman, Manager, and ask you if you received that letter through the mail? A. Yes, sir, I did.

Q. And that is Mr. Chapman's signature to the letter? A. Yes, sir.

Q. This Mr. Chapman, the writer of this letter, is manager of the Barber Lumber Company at Boise, Idaho? A. I so understood, yes, sir.

Q. And you replied to that letter?

A. I think I did, yes.

Q. You have not the original of that letter?

(Testimony of George S. Long.)

A. No, sir.

Q. I show you letter marked Complainant's Exhibit Long-F which purports to be a letter written by you to Mr. L. G. Chapman, Manager of the Barber Lumber Company, dated April 15, and ask you if that is a copy of the letter that you wrote Mr. Chapman in response to the letter I have just shown you and you identified, marked Long-E?

A. Yes, sir, I wrote that.

Mr. GORDON.—I read the letter identified by the witness marked Complainant's Exhibit Long-E: "James T. Barber, President.

William Carson, Vice-President.

S. G. Moon, Secretary.

C. W. Lockwood, Treasurer.

BARBER LUMBER COMPANY,

Eau Claire, Wisconsin.

April 5th, 1905.

Mr. George S. Long,

c/o Weyerhaeuser Timber Company,

Tacoma, Washington.

Dear Sir:—

We enclose herewith quit claim deed covering all lands which we have purchased in this vicinity in your name. Will you kindly have it executed at your convenience and return it to me.

We will be more than glad to have you visit us at any time here before or after our plant is completed, but you will no doubt find it much more interesting after we are running. From what investigation I have been able to make, I am of the opin-

(Testimony of George S. Long.)

ion that we are going to find the planing mill electrically driven very satisfactory, although it might not be quite so much so, were we situated where we would have to buy electrical current at a high price. However, it is something new and something we will know very much more about after a few months operation than we will beforehand.

Your truly,

L. G. CHAPMAN.

Manager.”

Mr. GORDON.—I also read the letter marked Complainant's Exhibit Long-F:

“Tacoma, Washington, April 15th, 1905.

Barber Lumber Company,

Boise, Idaho.

Mr. L. G. Chapman, Manager:

As requested I herewith hand you, duly executed, a quit claim deed running from myself and wife to the Barber Lumber Company, for 4774.83 acres, originally purchased in my name as a matter of convenience to your company.

I certainly hope to see your plant before another season.

Yours very truly,

GEORGE S. LONG.”

Mr. GORDON.—We offer in evidence the papers which have been identified by the witness Long marked Complainant's Exhibits Long-B, Long-C, Long-D and Long-F, and Long-E.

Q. Mr. Long, have you ever received from Mr. Barber, or any other officer or agent of the Barber

(Testimony of George S. Long.)

Lumber Company, a letter or telegram prior to the first of these letters, concerning this property that you have produced here?

A. Prior to the first of these letters?

Q. Yes, sir.

A. No, sir, not that I know of.

Q. And have you received from any officer or agent of the Barber Lumber Company or from Mr. Barber any letter other than you have produced here concerning these timber transactions?

A. No, sir, never received a letter.

Q. A telegram?

A. I think I received a telegram, yes.

Q. Recently?

A. No. No, I think I had a telegram from Mr. Barber at the time when I first went to Boise. I don't recall the date.

Q. That was sometime in 1907 at the time the Grand Jury met? A. Yes.

Q. At which Senator Borah and others were indicted? A. Yes.

Q. Have you that telegram? A. No, sir.

Q. Do you remember the substance of it?

A. Why, I think the substance of it was that the object he had in my taking the title was to disguise the fact from other buyers in there and for no other purpose.

Q. Disguise the fact that the Barber Lumber Company was buying?

A. Yes. I am not sure as to the contents of that telegram, but that is my impression of it. I have

(Testimony of George S. Long.)
not the original.

Cross-examination.

(By Mr. BUNDY.)

Q. You had some correspondence with Mr. Barber prior to any of these letters that had been shown you with reference to lands that you were buying of the State of Washington for the Weyerhaeuser Timber Company, did you not? A. Yes, sir.

Q. You came out here when?

A. February, 1900.

Q. Well, then, do you recall that Mr. Barber was out here some time in 1900? A. No.

Q. Possibly the first part of 1901?

A. In 1901 he was here, in April of 1901.

Q. Well, that is the time then?

A. Yes.

Q. Do you recall having a conversation with him at that time with reference to taking title in some lands out here in his name or some other name for the purpose of disguising from the public here that your company was buying it?

Complainant objects as not proper cross-examination and also being immaterial and irrelevant.

A. I had talked with Mr. Barber about the fact that I had been buying lands in his name for the Weyerhaeuser Timber Company. Prior to the talk with Mr. Barber, I had written to him that I wanted to use his name and he consented to it and when he was out here I told him about having used his name and when we got around to it we were to ask him about conveying the property back to the Weyer-

(Testimony of George S. Long.)

haeuser Timber Company.

Q. Oh, that was the way of it then?

A. Yes.

Q. Then before you had this talk with Mr. Barber you had had some correspondence with him relative to taking land in his name?

A. Yes, sir.

Q. And that correspondence, as I recall it, was sometime either in 1900 or the early part of 1901?

A. That was in 1900.

Q. Now have you that correspondence with you, the letters received by Mr. Barber or letter-press or other copies of letters you wrote to him?

A. No, sir, I have none with me.

Q. Well, you have made a hunt for it, haven't you?

A. I made a hunt for these letters. I can't find his letters. I can find my letters to him but Mr. Barber's letters to me I have not been able to find.

Q. Well, now, that correspondence which you had with Mr. Barber and the subsequent talks you had with him in which you told him you had taken title to certain timber lands in his name, were all prior to this letter of November 13, 1903, which Mr. Barber wrote to you and in which he says: "Exigencies have arisen which make it desirable to pass the title of certain lands"?

A. Yes, sir, it was all prior to this.

Q. From the talks and correspondence you had had with Mr. Barber, did you know and can you tell what Mr. Barber referred to in the language:

(Testimony of George S. Long.)

“Exigencies have arisen which make it desirable to pass the title of certain lands in Idaho through some party entirely removed from association with the Barber Lumber Company”?

A. Why, I wrote to Mr. Barber and told him that in some districts where we were buying that we found that whenever we started in to buy, that there was always a certain bunch of investors out here that always traded behind us and that invited considerable competition and for that reason I wanted to use his name in taking the deeds to purchasers in certain districts wherever I thought it was desirable, the sole object being to not have the public, especially the people who are inclined to buy, in competition with us to know we are in that neighborhood, we are in that territory; and I further told him that I wanted to use his name because he was not at all connected with the Weyerhaeuser Timber Company and because I knew him so well I knew it to be safe to put that in his name and he said it would be all right, to go ahead and use his name, and we did.

Q. Well, now, in view of that, can you tell what Mr. Barber referred to in the language quoted, “Exigencies have arisen” and so forth? What do you understand he meant by that?

A. He says, “These circumstances being similar to those which made it desirable to use your name in connection with some of the Weyerhaeuser Timber Company’s property,” which I understood to be that he was using it for the same purpose that I

(Testimony of George S. Long.)

was using his name.

Q. And which you have detailed?

A. Yes, sir.

Q. You sent the quitclaim deed in accordance with Mr. Chapman's request? A. Yes.

Q. And signed the one he sent to you, did you not? A. Yes, sir.

Q. Referred to in this correspondence?

A. Yes, sir.

Q. Mr. Long, how long have you been engaged in the timber business here and in the east?

A. I had no experience in the timber business in the east. My experience has been since I have been here, since 1900.

Q. State as to whether or not, in your observation, of lumber companies assembling large tracts of timber throughout this country and in the west, to take title from an entryman in the name of some person not connected with and known to be in the market on a large scale is common or otherwise?

A. Well, it is a very common practice. I, myself, have used the name of more than half a dozen different people out here.

STIPULATION.

It is stipulated and agreed, by and between counsel for the respective parties, that the signature of this witness to the foregoing deposition is dispensed with, subject to the right of either party to recall the witness for the correction of any error in the transcript of his testimony concerning the correction of which counsel cannot agree.

By agreement of counsel for the respective parties hereto, the taking of further testimony was suspended until 10:00 A. M., Monday, March 15, 1909, at the place and before the Special Examiner as before stated herein.

Seattle, Washington, March 15, 1909, 10:00 A. M.

Pursuant to adjournment had, counsel on behalf of complainant and on behalf of defendants, as before stated herein, appeared and being also present, the Special Examiner and the taking of testimony was resumed, as follows:

[Testimony of Harry B. Noble, on Behalf of the Complainant.]

HARRY B. NOBLE, a witness produced for and on behalf of the United States of America, complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Harry B. Noble?

A. Yes, sir.

Q. Where do you reside, Mr. Noble?

A. In Seattle, at present.

Q. Seattle, Washington. Where did you reside in 1903 in September?

A. Let's see, in September I was either in Boise or Moscow. I was going to school at that time in Moscow. At vacations I was down in Boise.

Q. What was your occupation, just a student?

A. Student.

Q. Then you were twenty-one years old in 1903?

A. Yes, sir.

(Testimony of Harry B. Noble.)

Q. You took up a claim under the Timber and Stone Act in September, 1903, did you?

A. Yes, sir.

Q. Mr. Noble, I show you timber and stone lands sworn statement dated September 14, 1903, of Harry B. Noble and ask you if you signed and filed that paper in the land office at Boise, Idaho?

A. Yes, sir.

Q. I show you non-mineral affidavit dated the same date by Harry B. Noble and ask you if you signed that paper and filed it in the Boise land office?

A. Yes, sir.

Q. I show you the testimony of Harry B. Noble taken on final proof December 24, 1903, and ask you if you signed that paper?

A. Yes, sir.

Q. And the cross-examination of Harry B. Noble of the same date and ask you if you signed that paper?

A. Yes, sir.

Q. I show you deed dated February 4, 1904, made by Harry B. Noble to George S. Long and ask you if you signed and executed that paper, acknowledged the same?

A. Yes, sir.

Q. Mr. Noble, who first spoke to you about taking up a timber claim?

A. I don't know as I could state that.

Q. Now, you didn't live at Boise, did you?

A. Yes, sir.

Q. With whom did you live in Boise?

A. My mother.

Q. With whom did you go to view the timber claim that you located on?

(Testimony of Harry B. Noble.)

A. Well, a party of four or five went up.

Q. Why were they?

A. The man that located me was Pat Downs.

Q. Had you met Pat Downs before?

A. I knew him, yes.

Q. How long had you known Pat Downs?

A. Oh, probably, a year. I could not say just how long.

Q. Well, did he speak to you about taking up a claim before you went to locate?

A. No, not in particular. I knew that he was locating.

Q. He told you he was locating?

A. Oh, I could not say that.

Q. Did you know Mr. John Kinkaid at that time?

A. I did.

Q. How long had you known him?

A. Known him for several years.

Q. Had you known him intimately?

A. Yes, I had.

Q. Was he a relative of yours?

A. No, sir.

Q. Did you talk to him about taking up a timber claim before you went to look at the claim?

A. No, sir, not that I know of. I talked with him lots of times on mining relations.

Q. And with whom did you go from Boise to where this land was?

A. I went with Pat Downs.

Q. Well, did you go with him alone, or did you go with the party?

(Testimony of Harry B. Noble.)

A. Well, there were several in the party.

Q. Who were they?

A. I could not state the names at present.

Q. Well, was Mr. Woodburn one?

A. I think he was.

Q. Mr. Loring T. Kinert?

A. Yes, I know I had two—in the same party as witnesses.

Q. Kinert? A. Yes, Kinert.

Q. He left Boise with you? A. Yes.

Q. And John K. Woodburn? A. Yes.

Q. Did Mr. Rice J. Harbaugh go with you?

A. Harbaugh, I believe he ~~did~~.

Q. Did George B. Ferraday? A. Yes, sir.

Q. Who arranged that party for you to go with?

A. Well, I could not say unless it was Pat Downs. He was the man that located the entire party.

Q. Well, who told you that the party was going and where you would meet the party, or join the party? A. I could not say.

Q. Did you know Mr. Woodburn before?

A. I did.

Q. Did he tell you that the party was being made up? A. I could not say.

Q. Did you know Mr. Kinert before then?

A. No, I had not.

Q. Did you know Mr. Ferraday before?

A. No, sir.

Q. Or Mr. Harbaugh? A. No, sir.

Q. Then the only person that you knew of that

(Testimony of Harry B. Noble.)

party besides Downs would have been Woodburn, is that correct? A. Yes.

Q. Now, what is your best recollection? Did Mr. Woodburn tell you that that party was going to start, to make arrangements for it?

A. I could not say. I knew of the land opening for a long time.

Q. You knew of that land being open for a long time? A. Yes.

Q. Who told you of that?

A. Why, it was in all the papers.

Q. What day did you leave Boise, what day of the week? To view this land?

A. I could not say now.

Q. Do you remember what day you went over the land? A. I could not say that, no.

Q. Do you remember what day you returned to Boise? A. No, sir.

Q. Do you remember what day you got in line to reach the land office?

A. I could not say that, no, sir.

Q. Couldn't you tell whether it was Saturday or Sunday?

A. I could not. It was not Sunday, would not prove up on Sunday.

Q. Well, did you not stand in a line and wait for the land office to open? A. I did.

Q. And don't you know, as a matter of fact, that you filed on Monday, the 14th?

A. I don't remember the date.

Q. You remember it was Monday, don't you?

(Testimony of Harry B. Noble.)

A. I don't remember that it was Monday.

Q. Did you stand in line or did you have somebody to hold a place in line for you?

A. I stood in line part of the time and my brother stood in line part of the time and held the place.

Q. Now do you remember what time in the afternoon or evening you went to the land office and formed in line? A. I don't remember.

Q. Haven't you any impression at all about it?

A. Well, it was along in the night some time. I don't know when it was.

Q. Do you remember what number of place you held in the line? A. No, sir.

Q. Do you know how many people were in the line? A. No, sir.

Q. Haven't you any idea how many were in the line? A. No.

Q. Do you remember whether there were three people ahead of you or ten ahead of you?

A. I could not say the number at all. There were a number ahead of me. That's all I can say.

Q. Do you know the name of the person that stood directly in front of you? A. No, sir.

Q. Or the person that stood behind you?

A. No, sir.

Q. Who prepared the sworn statement for you that you filed in the land office? A. What—

Q. The first paper you filed there?

A. I could not say.

Q. Where did you get it?

A. I don't know as I could tell that now.

(Testimony of Harry B. Noble.)

Q. Did somebody bring it to you in the line?

A. No, I had it before.

Q. Did you have it before you went up to look at this land?

A. I believe I did.

Q. Now who drew it for you?

A. I could not say now.

Q. (By Mr. BUNDY.) What did you say, you believe you did?

A. I thought I did. I don't just remember.

Q. Did Mr. Kinkaid prepare that paper for you?

A. I don't remember whether he did, or not.

Q. Did you prepare it yourself?

A. No, sir, I had an attorney prepare it.

Q. Who was your attorney?

A. I don't know who it was unless it was John Kinkaid. I was personally acquainted with him.

Q. Did you go to Mr. John Kinkaid's office and have him prepare that paper for you before you went up to look at this land?

A. I don't remember whether I did or not.

Q. Did you pay John Kinkaid for preparing it for you?

A. I could not say that.

Q. And did you pay Pat Downs for locating you?

A. I did.

Q. How much?

A. I believe it was fifty dollars.

Q. Fifty dollars. You sure of that?

A. I think that was it.

Q. I will read you question No. 7 which was asked you in cross-examination when you made your final proof and ask you whether you remember this

(Testimony of Harry B. Noble.)

question being asked and whether you remember making the answer which I shall read: "Did you pay or agree to pay anything for this information that you learned about this particular tract of land? If so, to whom and the amount." "Paid P. H. Downs twenty-five dollars for locating." Does that refresh your recollection any?

A. Not a bit. I might have paid him a hundred so far as I know now. That is too far back, I can't remember. I said a moment ago I paid fifty.

Q. Who told you to get in the line, in front of the land office?

A. I could not say as anybody did.

Q. How did you happen to go down and get in line Sunday night? A. I could not state now.

Q. Do you know of any reason why you got into the line? A. To prove up on the land.

Q. Do you know whether it was customary or not to go and stand in line over night to wait for the land office to open?

A. I had heard it was, yes.

Q. Who told you that?

A. I don't know.

Q. What was the nearest town?

A. Centerville.

Q. Centerville?

A. Centerville was. It was below Centerville, as near as I can remember, about five miles, five or six.

Q. Did you go to Centerville?

A. No, we went into Placerville and stopped over night.

(Testimony of Harry B. Noble.)

Q. And then you went out to look at this land?

A. Yes.

Q. Did Mr. Downs go with you?

A. He did.

Q. And who else went with you?

A. The parties that you mentioned.

Q. And did Mr. Downs give you a description of that property? A. He did.

Q. The numbers; did he tell you to take it to John Kinkaid? A. No, he did not tell me.

Q. Did he tell you that you should go and stand in line over night?

A. I could not say about that.

Q. What is your best recollection?

A. I cannot remember what he did say about that if he said anything.

Q. Then you went to the land office and got in the line after returning? A. Yes.

Q. Do you remember how many days you were back in Boise before you went into that line?

A. No, sir, I do not.

Q. Was it the day you returned?

A. I think not, but I could not say.

Q. Did you have your papers with you when you went into line? A. I believe I did.

Q. Did you stay in the line all night?

A. No, sir.

Q. What time did you leave the line?

A. I could not say that.

Q. Well, was it eleven o'clock or twelve o'clock or two o'clock? A. I could not say.

(Testimony of Harry B. Noble.)

Q. You haven't any recollection?

A. Well, I could not say a special date. I left some time in the night and came back in the morning.

Q. And your brother held your place?

A. He did.

Q. In the line over night. Now were you in line part of two nights or part of one night?

A. Well, I don't just grasp your question?

Q. I say, did you stand in that line a part of two nights or part of one night only?

A. Part of one night.

Q. You are sure it was not a part of two?

A. I think not.

Q. You are sure you were not there a part of two nights?

A. I am not sure of any of the particulars, of those details.

Q. Then do you remember how much money you paid to the land office the morning you filed your papers?

A. Something over \$400.00.

Q. Not the first time you filed, not the first time you went to the land office. You paid \$12.50 or \$7.50, didn't you?

A. I don't remember.

Q. You don't remember.

A. I remember the entire amount was over \$400.00.

Q. Now at the time that you went to Placerville to view this land did you know of any market for timber claims?

A. No, sir.

Q. Did you know of anybody that was buying

(Testimony of Harry B. Noble.)

timber claims? A. No, sir.

Q. Did you know of any person who had sold timber claims?

A. I don't think I did. My brother I think had sold one. I don't remember whether he sold his before mine or after.

Q. Well, had he sold when you located?

A. I could not say.

Q. Do you know to whom he sold?

A. I do not.

Q. Do you remember the occasion of your going to the land office to make your final proof, the occasion on which you paid four hundred dollars in the land office? A. Yes, I guess so.

Q. Do you remember who went with you that day to the land office?

A. I think Woodburn was one of them.

Q. Who?

A. I believe Mr. Woodburn was one of them and one of the other men that was in my party.

Q. Mr. Woodburn was a partner of John Kin-kaid's at that time, wasn't he?

A. I could not say.

Q. Did you go to his office or did he go to your place of business or home? A. Who?

Q. Woodburn.

A. Why, I believe we met in front of the land office.

Q. Did you have an appointment to meet him there? A. I did.

Q. Do you remember whether you paid this

(Testimony of Harry B. Noble.)

money in the land office by check or in cash?

A. In cash.

Q. Do you remember how long you had the money in your possession that you paid into the land office?

A. About four or five hours, I guess.

Q. Four or five hours. Where did you get it from?

A. My mother.

Q. Did she lend it to you?

A. She did not.

Q. She just gave it to you?

A. It was my own money.

Q. And did you go to the bank and buy a certificate of deposit with that money?

A. How do you mean?

Q. The day that you made your final proof?

A. I told you I paid them in cash.

Mr. KEIGWIN.—And you got the cash from your mother?

A. Yes, sir.

Q. Did you keep a bank account at that time?

A. No, sir.

Q. Had you ever kept a bank account up to that time?

A. No, sir.

Q. Do you remember on your cross-examination when you paid that money into the land office this question being asked you: "Have you kept a bank account during the past six months and, if so where?" And that you made this answer, "Capital State Bank, Boise, Idaho"?

A. That was the bank my mother had the money in.

Q. Well, did you go to the bank with her to get

(Testimony of Harry B. Noble.)

it out?

A. I don't remember whether I did or not. I would often draw money out for her.

Q. Then, as a matter of fact, you did not have any account of your own in the Capital State Bank?

A. Well, it all depends on what you call it, and how you look at it.

Q. Well, what do you understand if I ask you if you have got an account at the bank?

A. I did not have a personal account myself, but the money really belonged to me.

Q. Well, don't you know as a matter of fact on that day you went to the Capital State Bank and bought a certificate of deposit for \$400.00, and that you did not pay into the land office \$400.00?

A. Well, I thought I did. I don't recall.

Q. Do you remember going to the bank that morning? A. The morning I proved up?

Q. Yes. A. I don't remember.

Q. How long has your father been dead?

A. About eight or nine years.

Q. At the present time?

A. No, at that time.

Q. Now, at the time you made your final proof, did you know of a market for this property, this timber claim? A. No, sir.

Q. You did sell that property afterwards, though, didn't you? A. I did.

Q. To whom did you sell it?

A. I could not say now who I did sell it to.

Q. With whom did you negotiate the sale?

(Testimony of Harry B. Noble.)

A. My brother negotiated the sale. I was in school at the time.

Q. And what is your brother's name?

A. William F.

Q. Where does he live?

A. I don't know where he is now. The last I heard of him he was in California.

Q. What part of California?

A. Southern part, I guess.

Q. Do you remember the place?

A. No, I don't.

Q. How long has it been since you heard from him?

A. Well, it has been three or four months.

Q. Where was he then?

A. He was in Southern California.

Q. Well, what part of Southern California?

A. Well, I don't remember what place, sir.

Q. Don't remember. And how much did you get for this property?

A. I don't remember just what it was. I think it was in the neighborhood of eight hundred dollars.

Q. And you signed the deed at Moscow?

A. I did.

Q. And was the deed sent you by mail?

A. It was.

Q. Was there a letter with it?

A. I don't remember unless it was from my brother.

Q. Did he send a check along with the deed?

A. No.

(Testimony of Harry B. Noble.)

Q. When did he send the check?

A. He did not send a check.

Q. Well, how long after you signed the deed did you get the money for it?

A. I did not get the money. My mother got the money.

Q. All of it?

A. All of it. I received monthly payments to go to school on.

Q. Did you ever talk to Mr. John Kinkaid about selling this property?

A. No, sir.

Q. Never?

A. No, sir, I did not.

Q. Never saw Mr. John Kinkaid with reference to selling it?

A. No, not that I remember.

Q. Did you know Mr. George S. Long, Grantee in this deed?

A. No, sir.

Mr. GORDON.—I offer in evidence timber and stone lands sworn statement of Harry B. Noble, dated September 14, 1903; the non-mineral affidavit of Harry B. Noble of the same date; the testimony of Harry B. Noble given on final proof, dated December 24, 1903; the cross-examination of Harry B. Noble attached; all of which papers have been identified by the witness, Harry B. Noble, as having been signed by him. The notice of publication dated September 14, 1903; the testimony of the other witnesses given on final proof and the cross-examination thereof; the receiver's receipt and the register's certificate dated December 24, 1903; the deed of Harry B. Noble to George S. Long, consideration \$800.00, dated February 4, 1904, which has been identified

(Testimony of Harry B. Noble.)

by the witness Harry B. Noble as having been signed and acknowledged by him; the certified copy of the patent, dated December 1, 1904. All to the southwest quarter of section twenty-eight (28) in township six (6), north of range four (4) east, Boise Meridian. (The above documents attached together and marked Complainant's Exhibit Harry B. Noble No. 1.)

Cross-examination.

(By Mr. BUNDY.)

Q. What is your age at present, Mr. Noble?

A. Twenty-seven.

Q. Now you stated in answer to one question that you was not certain whether you had your first filing papers before you went up to look at the land or not. I will show you those filing papers and you will notice that it describes the land that you applied to purchase; that is, the southwest quarter of section 28, township 6, range 4 east. Didn't you know what land you were going to take before you went up there?

A. I could tell the section and part of it, yes, sir.

Q. I mean to say, had Downs given you the description before you went up there or did he give you that up there?

A. He gave it to me before I went up and while I was up there.

Q. Downs did? A. Yes.

Q. And gave you description of the land he told you was vacant? A. Yes.

(Testimony of Harry B. Noble.)

Q. Well, now, after you went up there and looked over the land then he gave you the numbers there, did he? A. Yes.

Q. In writing, the memorandm?

A. I had it before I went up.

Q. You had it before you went up?

A. That's what I said, yes. I had it before I went up.

Q. Now when you went up there what did Downs tell you with reference to this any more than that a certain tract of land up there was vacant and subject to entry?

A. Yes, and showed me the corners and directions.

Q. I mean before you went up to Centerville at all?

A. Yes, he said that was one that was going to be opened at this time.

Q. And then you went up and looked at this particular piece of land? A. I did.

Q. Well, do you recall now whether you had this first paper made out after you came back from there?

A. No, I don't remember that.

Q. Don't remember about that?

A. No, sir.

Q. Now, at the time you had this talk with Downs before going up and he told you that this piece of land would be open to entry on that date, did you have any further talk with him with reference to it more than that?

A. No, sir.

(Testimony of Harry B. Noble.)

Q. Did you have any talk with him with reference to what you would do with that land?

A. No, sir.

Q. Did you have any talk with him with reference to selling it to him or to anybody else?

A. No, sir.

Q. Had you had any talk with Wells or Kinkaid at that time with reference to selling the land?

A. No, sir; I had not.

Q. Now, Mr. Noble, at the time you went to the land office and filed your first paper, being the timber and stone sworn statement that I have shown you, you said, among other things, the following: "I have not direct, or indirectly, made any agreement or contract or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That statement was absolutely true at the time you made it, was it not, Mr. Noble?

A. Yes, sir.

Q. And at the time you filed this first paper you had no agreement of any kind or character with any person, firm or corporation, had you?

A. No, sir.

Q. And at that time you did not know to whom you would sell the land or what disposition you would make of it when you made final proof?

A. I did not.

Q. Now, did you enter into any such agreement or had you entered into any such agreement up to the

(Testimony of Harry B. Noble.)

time you made your final proof?

A. No, sir; I had not.

Q. Had you had any talk with any person, firm or corporation with reference to transferring this property to them up to the time you made your final proof? A. No, sir.

Q. It is charged in this complaint to this action we are trying, Mr. Noble, which is entitled, United States of America vs. Barber Lumber Company, John Kinkaid, George S. Long, James T. Barber, Sumner G. Moon and others, that you entered this land, made this timber and stone entry, at the request and for the benefit of the Barber Lumber Company and the other defendants in this action. Is that allegation true or false as far as you are concerned?

A. It is not true.

Q. And it is further alleged in this complaint that you made that entry pursuant to an agreement and understanding that you had made with these defendants by which you would enter this land for their benefit and at their request and that you would then go before the land office and testified what you knew to be false for the purpose of defrauding the United States out of this piece of land. Is that true, or is it false? A. It is false.

Q. And it is alleged in this complaint that pursuant to that agreement, you did go to the land office, both at the time of filing and again at the time of making final proof, and at the request of, for the benefit of these defendants you testified falsely for the purpose of defrauding the United States. Is

(Testimony of Harry B. Noble.)

that allegation true or false? A. It is not true.

Q. Did you enter this land for the benefit of any person other than yourself, Mr. Noble?

A. I did not.

Q. Did any person, at any time, prior to the time you sold this land, have any interest in or lien upon—

A. No, sir.

Q. —the land in question or the timber growing upon it? A. None whatever.

Q. You were, at the time you made this, a student of the University of Idaho? A. Yes, sir.

Q. What is your present business, Mr. Noble?

A. Foreman of the telephone company.

Q. Telephone company? A. Yes.

Mr. KEIGWIN.—At Seattle? A. Yes.

(Signed) HARRY B. NOBLE.

State of Washington,

County of King,—ss.

I, Roy W. McReynolds, a notary public in and for the State of Washington, duly commissioned and sworn, in pursuance to stipulation entered into between counsel for complainant and counsel for defendants in the foregoing entitled action, said stipulation being set forth on page 35 of the foregoing pages, do hereby certify that the witness to the foregoing deposition named George S. Long was, before examination, by me first duly sworn to testify the truth, the whole truth and nothing but the truth; that said deposition was then taken in shorthand by me at the time and place hereinbefore mentioned;

that said deposition was thereafter by me transcribed into typewriting in longhand and that the same as above transcribed and set forth is a full, true and correct report and record of said deposition, including questions, answers and objections of counsel.

Witness my hand and official seal this 15th day of March, A. D. 1909.

[Seal] ROY M. McREYNOLDS,
Notary Public in and for the State of Washington,
Residing at Seattle, Wash.

State of Washington,
County of King,—ss.

I, Arthur D. Williams, a notary public in and for the State of Washington, residing at Seattle, duly commissioned and sworn, and the special examiner appointed by order, duly filed, of the Judge of the Circuit Court of the United States for the District of Idaho, on the 6th day of March, 1909, for the purposes as in said order set forth; do hereby certify that the witnesses in the foregoing depositions named respectively Arthur E. Brookhart and Harry B. Noble were, before examination, by me first duly sworn to testify the truth, the whole truth and nothing but the truth; that said depositions were thereafter by Roy W. McReynolds, a competent stenographer, taken in shorthand and reduced to typewriting and that the same as above transcribed and set forth is a full, true and correct report and record of said depositions including questions, answers and objections of counsel.

Witness my hand and official seal this 15th day of
March, A. D. 1909.

[Seal]

A. D. WILLIAMS,

Special Examiner,

Notary Public in and for the State of Washington,
Residing at Seattle, Wash.

SPECIAL EXAMINER'S ETC. FEES.

Per diem of Special Examiner A. D. Williams

March 13, 1 day \$5.00

“ 15, 1 “ 5.00

Reporting and transcribing Depositions of

Arthur E. Brookhart, George S. Long

and Harry B. Noble, per diem Mar. 13,

1 day; Mar. 15, 1 day 10.00

Transcript 210 fol. (dupl.) a. 20¢ 42.00

\$62.00

A. D. WILLIAMS,

Special Examiner.

[Endorsed]: Filed June 18, 1909. A. L. Richardson,
Clerk.

*In the Circuit Court of the United States, for the
District of Idaho.*

UNITED STATES OF AMERICA,

Complainant,

vs.

THE BARBER LUMBER COMPANY et al.,

Defendants.

[Proceedings Had March 16, 1909.]

Portland, Oregon, March 16, 1909.

Met pursuant to stipulation of counsel, entered in the above-entitled cause, counsel having been delayed in arriving in Portland, there being present Messrs. Peyton Gordon, Charles A. Keigwin, special assistants to the Attorney General, counsel for complainant, and Mr. C. T. Bundy, counsel for the defendants, and the Examiner.

Whereupon the following witnesses were produced on behalf of complainant herein, who gave testimony as follows:

[Testimony of Albert B. Ewing, on Behalf of the Complainant.]

ALBERT B. EWING, a witness called on behalf of complainant, and after being first duly sworn by the Examiner to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Albert B. Ewing?

A. Yes, sir.

Q. Where do you reside, Mr. Ewing?

A. At Portland, at the present time.

Q. Portland, Oregon? A. Yes, sir.

Q. How long have you resided at Portland, Oregon? A. Since the middle of August.

Q. Last August? A. Yes, sir.

Q. Where did you reside in August, 1902?

A. At Boise, Idaho.

Q. How long had you resided at Boise, Idaho, at that time?

(Testimony of Albert B. Ewing.)

A. I think I went to Boise in December—well, since December, 1901.

Q. Since December, 1901?

A. Yes, sir—no, hold on—that was February, 1902—yes, since February, 1902. That is, I was out there in December, but I went back and I did not locate there until in February.

Q. Where had you lived prior to that time?

A. In Mankato, Minnesota.

Q. What is your occupation, Mr. Ewing?

A. I am in the land business, pine lands.

Q. What was your occupation in August, 1902?

A. I don't know whether I had started a store there at that time or not; I would not say for sure about that.

Q. You took up a claim under the Timber and Stone Act, in August, 1902, did you not?

A. Yes, sir.

Q. I show you timber and stone land sworn statement of Albert B. Ewing, dated August 11, 1902, and ask you if you signed that at the time and filed the same in the land office at Boise, Idaho?

A. I would not say in regard to descriptions, I don't remember now.

Q. No, that is not the question I am asking you. I am asking you if you signed that paper and filed it in the land office there?

A. Yes, sir,—just wait a minute (Witness refers to paper). Yes, I think that is my writing all right.

Q. I show you the testimony of Albert B. Ewing, given on final proof, dated November 7, 1902, and ask

(Testimony of Albert B. Ewing.)

you if you signed that paper?

A. Let me see what it is.

Q. (Hands witness paper who examines the same.)

A. Yes, sir; I think so. Yes, that is all right.

Q. Now, are you sure about it?

A. Well, it looks like my writing.

Q. You signed that paper, did you?

A. Oh, yes.

Q. I show you the cross-examination attached to that testimony and ask you if you signed that?

A. Yes, sir.

Q. Do you remember who first spoke to you about taking up a timber claim, or a claim, under the Timber and Stone Act?

A. Why, I don't think there was anyone spoke to me about it; I spoke to several about it myself.

Q. Do you know Mr. John I. Wells?

A. No, sir.

Q. Do you know Mr. Patrick Downs, and did you at that time?

A. I did, and I knew him prior to that time.

Q. Well, did you talk to him about taking a timber claim at that time?

A. Yes, sir.

Q. Did you make arrangements with him about taking up one?

A. Yes, sir.

Q. And Mr. Patrick Downs located you, did he?

A. Yes, sir.

Q. On a timber claim?

A. Yes, sir.

Q. Did you have any arrangement or agreement with him as to how you should pay him for locating

(Testimony of Albert B. Ewing.)

you on the land? A. I did, sir.

Q. How much were you to pay him?

A. \$25.00.

Q. Near what town was this claim that he located you on?

A. Well, it was nearer Centerville than any other town; we went out to Centerville.

Q. Centerville?

A. Yes, sir; Centerville, Idaho.

Q. And you went with him out to view this land?

A. Yes, sir.

Q. And do you remember who were of the party that you went to Centerville with?

A. Why, there was Mr. Humphrey that went with us, Mr. William Humphrey, he was one—Will Humphrey, and I think Mr. Warren was another man, and then there was a younger man with us, I don't remember his name.

Q. Was it George S. Warren?

A. Well, I don't remember his name.

Mr. BUNDY.—And yourself and wife?

A. No; my wife didn't go out with me, she was along, but she did not go out on this trip with us.

Q. And did you tell Mr. Downs that you wanted to be located on a claim? A. Yes, sir.

Q. And he took you out and located you?

A. Yes, sir.

Q. He took you to a particular claim?

A. That is, I was not sure that I would take the claim when I went out there; I went out to look at the claim.

(Testimony of Albert B. Ewing.)

Q. Well, did you take the claim he showed you?

A. Yes, I took the claim he showed me. But understand, when I went out there I just went to look at the claim; I did not know whether I would take the claim or not.

Q. At that time did you know of any market for timber claims in that section of the country?

A. No, sir.

Q. Did you know of any persons that were buying timber claims there in that section of the country?

A. No, sir.

Q. Or did you know of any persons that were selling timber claims?

A. No, sir. *

Q. Now, how long after you went over this land was it that you met John I. Wells?

A. Well, Mr. Downs, after we located on these claims that day, asked us to go into John I. Wells' office the next morning and pay him—we asked him about paying our locating fees, and he told us to go to John I. Wells' office the next morning and pay him and take a receipt for it, and so we went in there the next day, the next morning and paid Mr. Wells and took our receipts for it.

Q. Did Mr. Wells prepare your filing papers for you?

A. I think he did mine, but my wife made out her own.

Q. Then you went to the land office and filed your first papers?

A. Yes, sir.

Q. Did the other parties go with you?

A. I think that Mr. Will Humphrey and his wife

(Testimony of Albert B. Ewing.)

went with us.

Q. Did they go to Mr. Wells' office with you?

A. No, sir, I don't think so.

Q. Were they at Mr. Wells' office?

A. I do not know; I would not say; I know I met them in the land office—we were filing at the same time.

Q. Do you remember how much you paid in at the land office at that time?

A. I think the charges were \$7.50, something like that, for filing and printing notices—something of the kind.

Q. Then later you went to the land office and made your final proof, did you not?

A. Yes, sir.

Q. Well, up to the time you made your final proof, did you know of a market for this land, or know of any person or persons that were buying or selling timber claims?

A. No, sir, I did not.

Q. You remember how much you paid in the land office when you made your final proof?

A. My claim ran short, and I think it was less than \$400.

Q. And do you remember whether you paid that in check or in cash?

A. I paid it in cash.

Q. Was it cash, or a certificate of deposit?

A. It was cash I paid it in; I think I was given to understand that they would not accept anything but cash, before I went up there.

Q. And was it your own money that you used to make this final proof?

(Testimony of Albert B. Ewing.)

A. Yes, sir, it was my own money.

Q. Did you borrow it or—

A. No, sir, I had money of my own.

Q. Had you it in bank?

A. I had two bank accounts, I think at that time.

Q. Which banks?

A. Why, the First National, and the Boise City National.

Q. How long after you made your final proof did you start negotiations for the sale of this property?

A. I don't remember the date—it was some time after that though.

Q. Well, as near as you can remember?

A. I cannot remember now.

Q. I have not the date of the deed here—can you tell me the date of the deed, Mr. Bundy?

Mr. BUNDY.—February, 29, 1903.

Q. I will ask you how long before you made the deed did you start negotiations for the sale of that property?

A. Soon after we proved up we had several letters of inquiry about it. Mrs. Ewing had an offer—she had a choice claim, and she got several letters in regard to hers, a couple, I think.

Q. Who were those letters from?

A. I would not attempt to say at the present time, but they were from different ones.

Q. Did you answer them?

A. Yes, I think I did—there was one from Spokane and I think I tried to answer the one from Spokane.

(Testimony of Albert B. Ewing.)

Q. Do you remember who the gentleman was at that time?

A. No, I could not tell you at the present time.

Q. Would you remember his name if you heard it?

A. Why, I think I would know it if I looked over my papers—I think I could tell you.

Q. Was it Albert E. Palmer?

A. I could not say now—I would not say positively; it might be.

Q. And to whom did you sell your claim?

A. I am not sure about that either; some fellow from Spokane—I think the deed runs to some one in Spokane.

Q. And with whom did you negotiate that sale?

A. With Mr. Pritchard.

Q. Mr. Louis M. Pritchard?

A. I don't know whether his name was Louis or not—I don't know what his first name was; he used to live up in Boise he was an attorney up there.

Q. Did he come to see you about it?

A. He wrote me a note, and I called at his office.

Q. How much did he offer you for your claims?

A. Well, I am not sure, and I know I paid him a commission, but I think it was about \$1800 net that I would get for the two claims.

Q. Had you ever met Mr. Pritchard before that time?

A. I don't think I had ever seen Mr. Pritchard up to the time he wrote me this note, that is, to know who he was.

(Testimony of Albert B. Ewing.)

Q. Then you and your wife sold your claims at the same time and made one deed jointly for both places?

A. Yes, sir, we made one joint deed.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement of Albert B. Ewing, dated August 11, 1902; also non-mineral affidavit of Albert B. Ewing, of the same date; also the testimony of Albert B. Ewing given on final proof, November 7, 1902, and the cross-examination thereto attached. Which papers have been identified by Mr. Albert B. Ewing as having been signed and filed by him. Also the notice of publication dated August 11, 1902, the Receiver's receipt, and the register's certificate, dated November 7, 1902, and a certified copy of the patent dated May 24, 1904, all to Lots 3 and 4, and the east half of the southwest quarter of section 7, in township 7 north of range 6 east, Boise Meridian, and such papers are marked Complainant's Exhibits A. B. Ewing No. 1.

That is all. You may cross-examine.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Ewing, you say you saw Pat Downs in reference to this land before you went up there?

A. Yes, sir.

Q. State what, if any, talk you had with Mr. Downs in that transaction.

A. Well, he was stopping at the hotel where I used to drop in once in a while, and I heard he was a timber cruiser, and I asked him in regard to timber

(Testimony of Albert B. Ewing.)

claims around there and I told him I wanted to take up a timber claim, and my wife wanted to take up one, and he asked me to come out and look at one—that was two or three months prior to the time I went out with him.

Q. At that conversation was there anything said about what you should do with your timber claim, Mr. Ewing? A. No, sir.

Q. Now, when you went out to look at the land and the party went with you, who paid the expenses of the team and the hotel bill?

A. I paid my own expenses, and I hired my own rig.

Q. Who paid the \$7.50 filing fee? A. I did.

Q. Who paid the Government price of \$2.50 an acre when you came to prove up?

A. I paid it myself.

Q. Now, Mr. Ewing, at the time you filed your first papers and made your original filing upon this land was there any contract, or agreement, written or oral, expressed or implied, between you and any person, firm or corporation by which you had agreed to turn over to that person, firm or corporation, or to such persons as they should direct, the title which you might acquire from the United States pursuant to the entry you were then making?

A. No, sir, nothing whatever of the kind.

Q. Was there any such, or similar agreements or contract, at the time you made your final proof?

A. No, sir.

Q. Did you make this entry for the benefit of any

(Testimony of Albert B. Ewing.)

person, other than yourself?

A. No, sir, I did not.

Q. It is charged in the complaint in this action we are trying, Mr. Ewing, that you made this entry in question at the request of and for the benefit of the Barber Lumber Company, James T. Barber and Sumner G. Moon, and the other defendants named; is that true or false?

A. It is absolutely false, so far as I am concerned.

Q. And it is further alleged in this complaint that you made that entry pursuant to an agreement that you had entered into with the defendants, or some of them, prior to the time you filed by which you were to make the filing at their request and for their benefit and that then at their request and for their benefit, you would then go to the land office and testify what you knew was absolutely false, for the purpose of defrauding the United States out of its title to this timber land, is that true or false?

A. It is absolutely false. Before I came to Idaho, I wrote to Congressman McCleary, and asked him about the timber land laws and he sent me a little book containing the laws relative to timber land—timber entries, and marked with a blue pencil, and I still have that book; this occurred before I ever went to Idaho or thought of taking up a timber claim there.

Mr. BUNDY.—That is all.

It is hereby stipulated by and between counsel for the respective parties hereto, that the signatures of this and other witnesses to be examined, in this mat-

(Testimony of Mantie Beckley.)

ter, shall be dispensed with, counsel for both parties reserving the right to recall any witness at the Government's expense, for the correction of any errors in the transcription of his testimony concerning the correction of which counsel cannot agree.

[Testimony of Mantie Beckley, on Behalf of the Complainant.]

MANTIE BECKLEY, a witness called on the part of the complainant, the United States of America, after being first duly sworn by the Examiner to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Mrs. Mantie Beckley?

A. Yes, sir.

Q. Where did you reside in 1902, Mrs. Beckley?

A. In Boise, Idaho.

Q. What is your husband's name?

A. C. R. Beckley—Charles R. Beckley.

Q. Mrs. Beckley you took up a claim under the Timber and Stone Act in October, 1902, did you not?

A. I think it was that time, yes, sir.

Q. I show you timber and stone land sworn statement of Mantie Beckley, dated October 3, 1902, and I ask you if you signed that and filed the same in the land office at Boise? A. Yes, sir.

Mr. BUNDY.—Did you go with your husband?

The WITNESS.—Yes, sir.

Q. (Showing witness paper.) You signed that?

(Testimony of Mantie Beckley.)

A. Well, I suppose I did.

Q. That is your signature, is it not? (Showing witness timber and stone land sworn statement.)

A. Yes, sir, it looks much like my writing.

Q. I show you non-mineral affidavit of Mantie Beckley of the same date, and ask you if you signed and filed that paper in the land office at Boise?

A. It looks like my signature, yes, sir.

Q. You signed it? A. Yes, sir.

Q. I show you the testimony of Mantie Beckley given on final proof, February, 12, 1903, and ask if you signed that?

A. It looks like my signature.

Q. Did you sign it? A. Yes, sir.

Q. I show you the cross-examination attached and ask you if that is your signature to that paper?

A. Yes, sir, it looks like my signature.

Q. Did you sign that? A. I did, yes, sir.

Q. I show you affidavit dated February 12, 1903, signed Mantie Beckley, and ask you if you signed your signature to that paper and filed it in the land office on that date?

A. Yes, it looks like my signature.

Q. I show you a deed dated February 13, 1903, made by Charles R. Beckley and Mantie Beckley, husband and wife to Horace S. Rand, and ask you if you signed that paper and acknowledged the same?

A. Yes, sir.

Q. Before L. M. Pritchard?

A. Yes, sir, that looks like my signature.

Q. Mrs. Beckley, who first spoke to you about

(Testimony of Mantie Beckley.)

taking up a timber claim?

A. Well, I think Mr. Beckley and Mr. Sullivan, and Mrs. Sullivan. I think we all talked it over together, as near as I can remember now; you see that has been quite a while ago.

Q. Did you, at the time you located on this claim, know of any market for timber claims?

A. No, sir.

Q. You did not know of anyone who was either buying or selling timber claims?

A. No, sir, I did not pay any attention to that part of it; Mr. Beckley attended to that.

Q. And do you remember who located you on your timber claim?

A. Yes, sir.

Q. Who was it?

A. Mr. Downs.

Q. Mr. Patrick Downs?

A. Yes, sir.

Q. And with whom did you go to view this land?

A. There was Mr. and Mrs. Sullivan, Mrs. Schmelzel, and Mr. Beckley and myself.

Q. And do you remember who located you on your timber claim?

A. Yes, sir.

Q. Who was it?

A. Mr. Downs.

Q. Mr. Patrick Downs?

A. Yes, sir.

Q. And with whom did you go to view this land?

A. There was Mr. and Mrs. Sullivan, Mrs. Schmelzel, and Mr. Beckley and myself.

Q. Do you know who arranged for that party to go?

A. No, I do not know that—I really don't know.

Q. Did you know Mr. John I. Wells of Boise, at that time?

A. No, I did not.

(Testimony of Mantie Beckley.)

Q. How long after you went to view this land was it before you met Mr. John I. Wells?

A. Well, I really can't tell you, because I did not know him and I have not seen him since; it seems to me that we met him afterwards, but I could not tell you when or where.

Q. Did you not go to the office on returning from viewing this land, and have your filing papers made out by him?

A. Well, I could not tell you that for sure—did Mr. Wells or Mr. Pat Downs office together?

Q. I think *they, yes.*

A. Well, I could not tell you.

Q. Well, did Mr. Downs give you the numbers to this property, or a description of it, when you were up to where the land is?

A. Well, I could not tell you that either; Mr. Beckley attended to that, and I did not pay very much attention to that part of it.

Q. Do you know where you had your filing papers made out—who made them out for you?

A. No, I do not. That has been about seven years ago—hasn't it?

Q. Yes. Do you remember the occasion of filing your first papers in the land office?

A. Yes, sir; I know we went somewhere.

Q. When you went to look at this land did Mr. Pat Downs take you out to the claim and say, "This is the one you are to be located on?"

A. Yes, sir.

Q. Did he show you more than one claim?

(Testimony of Mantie Beckley.)

A. Well, each one of us was located, you know, and we went over it. Mrs. Schmelzel and myself, and Mrs. Sullivan—just the women, you know—we went over these claims, and we looked over them for ourselves, and then we rested a while and then the men went over theirs—this was after we got out there.

Q. What I mean is, did Mr. Downs, Patrick Downs, take you out to the claims and say, “This one is for you, Mrs. Beckley, and this one is for you, Mrs. Schmelzel, and this one is for you Mrs. Sullivan”?

A. Well, really, I could not say whether he did or not.

Q. Did he ask you whether you wanted this claim, or some other claim?

A. I don’t know whether he did or not, really.

Q. You left it entirely with him?

A. Well, I thought he was to locate us on a timber claim, and as far as I saw he did it, but whether that was talked over or not, I really could not tell you.

Q. Did you pay him anything for locating you?

A. Why, yes, sir, we paid him his fee.

Q. How much did you pay him?

A. I really could not tell you that, Mr. Beckley paid him—Mr. Beckley paid all of the bills; I guess I did know it at the time, but I have forgotten it now.

Q. Now, do you remember the occasion of making your final proof?

A. You mean where?

Q. You remember of going to make your final proof to the land office?

(Testimony of Mantie Beckley.)

A. Well, yes, I think I did, at the land office.

Q. And you remember how much money you paid that day at the land office?

A. Well, Mr. Beckley did that paying—he paid, the money, yes, sir; but I do not know exactly how much he paid.

Q. And did he pay for your claim at the land office that day?

A. Why, I think so, yes, sir.

Q. Did he pay the money?

A. Well, I don't remember that.

Q. Well, you remember that you could not make your final proof that day, the day that it was set for by the advertisement, because you did not have the money that day—do you remember that?

A. No, I don't remember that either. I know we had to pay for it, but I don't remember that part of it, because I paid so little attention to that part of it. I suppose I would have had to do all of that myself if I had not had my husband to do it for me, and for that reason I did not pay so much attention to it.

Q. Well, you remember of making this affidavit that I have shown you?

A. Why, yes, sir, I made that affidavit.

Q. And do you remember swearing in that affidavit that you did not offer proof on the 11th day of February, as you did not have the money until to-day—which was the next day?

A. No, I don't remember that, but then I don't know but what I did; I thought we were entitled to

(Testimony of Mantie Beckley.)

a timber claim, and I did not pay so very much attention to the dates, little things like that.

Q. Now, at the time you filed this claim in the land office—I mean at the time you made your final proof, did you know of any person that would purchase it from you? A. No, I did not.

Q. And how long after you made your final proof was it that you started negotiations for the sale of this property? Was it the same day or the next day?

A. No, I think we kept ours for a while, I won't say a year, but we kept it quite a little while after we took this timber claim, I don't remember just how long after.

Q. You made a deed for it though the next day, didn't you? A. Well, I don't remember that.

Q. Now, do you know Mr. Horace S. Rand?

A. Of Burlington?

Q. Yes.

A. Well, we used to live in Burlington, and I did not know him only by name—I was not acquainted with him; I knew he lived in Burlington, and we lived in Burlington for many years, you know.

Q. You did not have any transactions with him concerning this property, did you?

A. Not at all, I did not.

Q. Do you know the gentleman in whose office you made this deed, did you know him?

A. No, I don't remember now.

Q. Did you meet Mr. John Kinkaid?

(Testimony of Mantie Beckley.)

A. I met Mr. John Kinkaid, yes, sir, I think we went to his office, now I am not sure, but I think we did.

Q. And the deed you have identified here is the only deed you ever signed for that property?

A. I think so. Of course, I am not positive about any of those little deals, but I think so, as near as I can remember now.

Mr. GORDON.—We now offer in evidence timber and stone land sworn statement of Mantie Beckley, dated October 3, 1902, the non-mineral affidavit of Mantie Beckley of the same date, and the testimony of Mantie Beckley given on final proof February 12, 1903, and the cross-examination attached, and the affidavit of Mantie Beckley signed February 12, 1903, all of which papers have been identified by the witness Mantie Beckley, as having been signed and filed by her in the land office at Boise, Idaho. Also the notice of publication dated October 3, 1902, and the receiver's receipt, and register's certificate, dated February 12, 1903, also certified copy of the patent, dated June 10, 1904, and a deed dated February 13, 1903, made by Charles R. Beckley and Mantie Beckley, husband and wife, to Horace S. Rand, which has been identified by Mantie Beckley as having been signed and acknowledged by her, all to the southwest quarter of section 22, township 7 north of range 8 east of the Boise Meridian. The deed also conveys property contained in the claim of Charles R. Beckley.

(Testimony of Mantie Beckley.)

These papers are marked Complainant's Exhibits Beckley No. 1.

Mr. BUNDY.—Defendants object to the introduction of the final proof papers, including the cross-examination, on the ground that the same are incompetent, irrelevant and immaterial, and ask that the final proof papers of the former witness, E. B. Ewing, be struck out for the same reason.

Mr. GORDON.—That is all, you may cross-examine.

Cross-examination.

(By Mr. BUNDY.)

Q. Mrs. Beckley, at the time that you filed your first papers in the land office—filed on this land—had you had any talk with any person with reference to the selling of that land when you acquired title thereto? A. No, sir.

Q. At that time had you entered into any kind of agreement or contract, written or oral, express or implied, with any person, firm or corporation, by which you had agreed to transfer, or turn over to such person, firm or corporation, or to such person as they should direct, the title which you might acquire from the United States? A. No, sir.

Q. Had you made any such or similar agreement at the time you made your final proof in the land office? A. No, sir.

Q. Did any person, firm or corporation, prior to the time you actually sold this property, have any interest in, or lien upon the land embraced in your entry? A. No, sir.

(Testimony of Mantie Beckley.)

Q. It is charged, Mrs. Beckley, in this complaint in this lawsuit we are trying here, that you entered this land at the request of and for the benefit of the Barber Lumber Company—

A. No, sir.

Q. —James T. Barber—

A. No, sir.

Q. —Sumner G. Moon?

A. No, sir.

Q. —and the other defendants?

A. No, sir, that is not true.

Q. Now, the question is, is that allegation, that statement in the complaint, true or false, so far as you are concerned?

A. Well, there was nothing of that kind that I know of—it is not true.

Q. Then so far as you are concerned that charge in the complaint is not true?

A. No, sir.

Q. And it is also alleged in the complaint in this suit, that at the request of the Barber Lumber Company, and the other defendants, you went to the land office and testified to what you knew to be absolutely false, for the purpose of defrauding the United States out of title to 160 acres of land. Is that true or false?

A. Well, I should hope not to be guilty of anything of that kind.

Q. Well, the question is, is that true or false?

A. Why, it is false.

Mr. BUNDY.—That is all.

[Testimony of Charles R. Beckley, on Behalf of the Complainant.]

CHARLES R. BECKLEY, a witness called on the part of the complainant, United States of America, and after being first duly sworn by the Examiner to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Where do you live, Mr. Beckley?

A. I live temporarily at La Grande, Oregon.

Q. Where did you reside in October, 1902?

A. I considered Boise, Idaho, my home.

Q. How long had you lived at Boise at that time?

A. Possibly four years. Understand I am a commercial traveler, and have been for many years, and I was traveling out of San Francisco at the time I considered Boise my home, same as I consider it my home now.

Q. What is your occupation now?

A. Commercial traveler.

Q. What was it in 1902?

A. Commercial traveler.

Q. And lumberman?

A. Formerly, years before.

Q. Did you know Mr. John I. Wells in October, 1902?

A. Yes, sir.

Q. And Mr. Patrick H. Downs?

A. Yes, sir.

Q. Did you know Mr. Louis M. Pritchard at that

(Testimony of Charles R. Beckley.)

time? A. Yes, sir.

Q. Did you know Mr. John Kinkaid in October, 1902? A. Yes, sir.

Q. Those gentlemen I have referred to are all of Boise, Idaho? A. Yes, sir.

Q. You took up a timber claim under the Timber and Stone Act in October, 1902, did you, Mr. Beckley? A. Yes, sir.

Q. I show you timber and stone land sworn statement dated October 3, 1902, of Charles R. Beckley, and ask you whether or not you signed and filed that paper in the Boise land office?

A. Yes, sir, I did.

Q. I show you the non-mineral affidavit of Charles R. Beckley, of the same date, and ask you if you signed that paper and filed it in the land office at Boise? A. I did.

Q. I show you the testimony of Charles R. Beckley taken on final proof, February 12, 1903, and ask you if you signed that paper? A. Yes, sir.

Q. And the cross-examination attached, did you sign that paper? A. Yes, sir.

Q. I show you affidavit dated February 12, 1903, made by Charles R. Beckley, and ask you if you signed that paper and filed the same in the land office at Boise on that date? A. Yes, sir.

Q. I show you a deed dated February 13, 1903, made by Charles R. Beckley and Mantie Beckley, his wife, to Horace S. Rand, and ask you if you signed and acknowledged that deed before L. M. Pritchard? A. Yes, sir.

(Testimony of Charles R. Beckley.)

Q. Mr. Beckley, at the time you filed on this land, did you know of a market for timber claims in that section of the country?

A. Not positively, no, sir. I had reason to believe there was a market though—I had been told there was but I had no positive information.

Q. Do you know by whom you had been told, Mr. Beckley? A. Yes.

Q. Do you mind telling us?

A. Well, I call to memory one or two individuals who assured me that there was a demand for such claims; one was Mr. Harry Eagleson, and Mr. Joseph Sullivan, and Mr. H. A. Schmelzel, that assured me there was.

Q. A market for it? A. Yes, sir.

Q. And did they intimate to you who were purchasing timber claims? A. No, sir.

Q. Then you did not know anyone at that time that were purchasing timber claims?

A. Positively, no, sir.

Q. Do you mean that your answer is positive, or that you do not know positively?

A. I only had their word for it; I was out of the lumber business, but they assured me, these gentlemen did, they there were parties—more than one company who were trying to secure pieces of timber—

Q. Do you remember who located you on that claim? A. Yes, sir.

Q. Who was it?

A. Mr. Patrick Downs.

(Testimony of Charles R. Beckley.)

Q. And you went up with him to view this claim with a party?

A. Yes, sir, a party of us went up.

Q. And your wife was one of that party?

A. She went with me, yes, sir.

Q. That is, Mrs. Mantie Beckley who has just testified?

A. Yes, sir, my wife.

Q. And as I understand you, Mr. Patrick Downs located you?

A. Yes, sir, he was my locator.

Q. And did he give you a description of the property while you were up there, or did you have a description before you left for up there?

A. You mean on the ground, if he gave me a description?

Q. Yes, did he give you a description of the land while you were up there?

A. No, sir, we went and viewed the timber personally ourselves.

Q. Then did he give you a description of it so you could make your filing upon it—your timber and stone filing?

A. No, sir, nothing more than we could see for ourselves—we could see with our own eyes what it was.

Q. No, you do not understand me. Did he give you the numbers, the township and range of that land?

A. Not at that time we were up there, no, sir.

Q. Well, where did you get your description, the numbers with which you prepared your filing papers?

(Testimony of Charles R. Beckley.)

A. Why, they were, I think, in the office of Mr. Wells.

Q. Mr. John I. Wells? A. Yes, sir.

Q. And did Mr. Downs tell you to go there and get those numbers?

A. No, sir, he had a map representing these different claims upon which we were supposed to locate, some of them being taken, and some of which had not been taken, but he hadn't any numbers, as I remember.

Q. And you went to Mr. Wells' office to get the numbers as you wanted them?

A. Yes, sir, when it came to our final filing we did.

Q. Did you go to Mr. John I. Wells' office before you went up to see Mr. Downs? A. No, sir.

Q. How long after you returned from viewing this land did you go to see Mr. John I. Wells?

A. Well, a day or two, I could not say positively—it was shortly after we returned, though.

Q. And did he prepare your filing papers for you, Mr. Wells?

A. Now, I don't know that there was any preparations, any more than the numbers, giving the sections, and numbers of the land that we were supposed to be filing on.

Q. And you and your wife went to the land office together, I presume? A. Yes, sir.

Q. And you paid the fees for her filing at that time? A. Yes, sir.

Q. And did you pay Mr. Downs, or Mr. Wells,

(Testimony of Charles R. Beckley.)

the locating fee?

A. As I remember, they were both present in the office of Mr. Wells at the time; but as I understood it they were together in the office, and I don't know now whether I paid it—I paid it possibly, to Mr. Wells, but I would not swear to that.

Q. And you paid your wife's location fee at the same time? A. Yes, sir.

Q. And how much was it? \$25.00?

A. No, \$50.00, I believe.

Q. \$50.00 apiece?

A. Yes, I believe it was \$50.00 each—I think \$50.00—apiece is what we paid.

Q. Now, between the time that you made your original entry, and the time you made final proof, did you know of any person that would purchase your timber claim or that of your wife?

A. Between the time of my locating—

Q. And final proof? A. No, sir.

Q. You did not know of any person that would purchase them from you? A. No, sir.

Q. And you had offered to sell it to no one?

A. No, sir.

Q. And no one had offered to purchase your claim?

A. Not directly; I was told by these same parties, or one of them particularly, Mr. Eagleson, that there was a party somewhere on the coast there that wanted this block of timber, several quarter sections, I don't know how much.

Q. Did Mr. Harry Eagleson go up with you to

(Testimony of Charles R. Beckley.)

view this land at the same time you located?

A. No, sir, he did not go with me, but he was there, I believe, ahead of me.

Q. Well, did he make up the party of which you were a member? A. No.

Q. Now, the date on which you advertised to make your final proof, you did not make proof on that date, as I understand it, according to the affidavit you filed here—do you remember that?

A. Why, I believe there was something that prevented us from doing so.

Q. Do you remember what that was?

A. Why, I don't remember just what it was, unless it was some occasion of my being away, or something.

Q. Was it not for the reason that on that date, the date set for making final proof, that you did not have the money to make your own and your wife's proof? A. No, sir, I had the money.

Q. I will ask you to read that affidavit which you stated you signed and filed in the Land Office at Boise, and tell us whether or not the matters contained in that affidavit are true? (Shows witness affidavit.)

A. This is in consequence of my wife. I remember that occasion. I had some insurance money coming that I wanted to make proof at the same time with that she did. This is correct; I had the money but she wanted to make proof at the same time—that is correct.

Q. By that you mean you did not have the money

(Testimony of Charles R. Beckley.)

at that time for both claims?

A. For both us, yes, sir, that is correct.

Q. Because it reads there that you did not have the money—the affidavit reads “Did not appear on the 11th day of February, 1903, to offer proof because he did not have the money for his proof and his wife’s proof”?

A. Well, it was my wife’s—it was hers; in talking with her, she concluded that she wanted to make proof at the same time—she wanted to go with me.

Q. Then the next day you both went to the land office and made your proof?

A. I cannot say whether it was the next day, but it was shortly after.

Q. Well, it was on the 12th, and this was on the 11th?

A. Yes, sir; I believe it was.

Q. Mr. Beckley, did you pay the money into the land office in cash or by check?

A. It was money.

Q. And had you that money in your business, or did you borrow the money?

A. No, sir; it was my own money.

Q. And had you kept it in the bank or about your person?

A. In the bank.

Q. Which bank?

A. The Capital City Bank.

Q. Of Boise, Idaho?

A. Yes, sir.

Q. Do you remember how long you had that amount of money in the bank?

A. Well, I had had a part of it there for quite a while, and a part of it, I will state to you by way of

(Testimony of Charles R. Beckley.)

explanation, that I got from the maturing of ten shares of the Iowa Building and Loan Association which I received that day—the day it was due, about that time—about the time that we made final proof we received this money from this company, the Iowa Building and Loan Association, of Des Moines, Iowa.

Q. Now, about how long after you made your final proof was it you started negotiations for the sale of this property, Mr. Beckley?

A. I could not say.

Q. Well, was it the same day, or a month afterwards, or how long afterwards?

A. I should say nearly a year. I don't remember, but as I remember it, it must have been at least several months after, probably eight, nine or ten months after—I don't remember.

Q. Well, with whom did you conduct the negotiations for the sale of that property?

A. The parties that went up there to locate, we had an agreement among ourselves, knowing there were parties there that wanted to purchase this timber, we agreed among ourselves that one would not sell without the consent of the others, that we were to hold the land together, and this coast party had been also talking to Mr. Eagleson who represented the company that wanted to make this purchase over there, and it seems there was another party there that I did not know, at the time, but learned afterwards, the Rand Lumber Company, of Burlington, Iowa; and I said, "All right," I didn't have to sell, "and I will hold," and how long this time was, if you call

(Testimony of Charles R. Beckley.)

these negotiations, I could not say.

Q. That was before you made final proof, was it?

A. No, as I remember it was after final proof.

Q. And you sold, or made your deed to Mr. Horace S. Rand, of Burlington, Iowa?

A. Yes, sir.

Q. You did not have any negotiations with Mr. Rand?

A. Personally?

Q. Yes, sir. A. No, sir.

Q. Do you know who represented Mr. Rand there?

A. Well, I understand—it is only hearsay however—that it was Mr. Kinkaid.

Q. Well, did you see Mr. Kinkaid about the sale of the property?

A. No, sir.

Q. In whose office did you sign this deed that you have identified?

A. That was in Mr. Kinkaid's office.

Q. And did he have the deed prepared when you went there, or did you wait while he prepared it?

A. Why, I was delayed a while, while he prepared something; possibly this was it.

Q. And this is the deed you identified as having signed?

A. Yes, sir.

Q. And did you have any talk with him about the price to be paid for this claim and that of your wife?

A. Yes, sir, there was some talk at the time, as I remember; the price agreed upon was \$800, for which I got a check.

Q. And he made a check for the two claims, \$1600?

(Testimony of Charles R. Beckley.)

A. My recollection is I got a check for the two claims.

Q. Was that his personal check, or somebody else's check?

A. I think it was his personal check; but I would not want to say positively in regard to that, but that is my recollection now.

Q. Now, had you had any conversation with Mr. Kinkaid concerning the sale of this property prior to the day you made the deed? A. No, sir.

Q. And was it Mr. Eagleson who told you to go to Mr. Kinkaid's office and make this deed?

A. Yes, sir. And I would say that during my—from the information I got I thought he was the man acting for the company.

Q. Did you ever make any other deed to this property? A. This same property?

Q. Yes, sir. A. No, sir, no other deed.

Q. Never asked you to? A. No, sir.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Charles R. Beckley, dated October 3, 1902, the non-mineral affidavit of Charles R. Beckley, of the same date, the testimony of Charles R. Beckley given on final proof, February 12, 1903, the cross-examination of Charles R. Beckley attached, the affidavit of Charles R. Beckley, dated February 12, 1903, all of which papers have been identified by Mr. Charles R. Beckley the witness, as having been signed by him and filed in the land office at Boise, Idaho. Also the notice of publication dated the 3d of October, 1902, the receiver's

(Testimony of Charles R. Beckley.)

receipt and the register's certificate, dated February 12, 1903, a certified copy of the patent, dated June 10, 1904, and a deed dated February 13, 1903, by Charles R. Beckley and Mantie Beckley, husband and wife, to Horace S. Rand, consideration \$1600, identified by the witness Charles R. Beckley as having been signed by himself and Mantie Beckley, his wife, and acknowledged before L. M. Pritchard, all to the north half of the northwest quarter, the southwest quarter of the northwest quarter and the northwest quarter of the southwest quarter, of section 26, in township 7 north of range 8 east of the Boise Meridian.

The deed contained in the claim which Mantie Beckley entered, and is also offered in evidence with her testimony.

These papers are marked Complainant's Exhibit Beckley No. 2.

Mr. GORDON.—That is all, you may cross-examine.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Beckley, prior to going up to look at this land, did you have any talk with John I. Wells with reference to it?

A. No, sir.

Q. Or with John Kinkaid?

A. No, sir.

Q. Or with L. M. Pritchard?

A. No, sir.

Q. Or with Patrick Downs?

A. Possibly I had some talk with Mr. Downs who located us.

Q. Before going?

A. Yes, sir.

(Testimony of Charles R. Beckley.)

Q. At the first talk you had with Mr. Downs, before going up to view the land, was anything said with reference to what particular claim you were to be located upon? A. No, sir; nothing.

Q. When you left with this party you have mentioned to go up and view the land, did you know what land you were going to locate? A. No, sir.

Q. For what purpose, if any, had you employed Patrick Downs?

A. As a sort of locator only.

Q. And what did his work as locator consist of, as you understood it?

A. Why, conveying me to this ground, for the purpose of viewing it and for the purpose of ascertaining whether or not his statement regarding the quality and quantity of the timber was as he represented it to be.

Q. And had he made any statement to you prior to going up there as to any particular piece, or that there was land up there worth entering?

A. No, he just represented to me that certain quarter sections up there were not filed on.

Q. Now, did he do that after you got up there—did he show you this map after you got up there, or before?

A. I believe I will have to say both—

Q. Both? Before you went up and after?

A. Yes, sir; I think I looked at the same map while I was there, as well as having seen it before I went up there.

Q. Now, then, before you went up there did he

(Testimony of Charles R. Beckley.)

show you a map indicating the various pieces that were vacant? A. Yes, sir.

Q. And did he tell you which particular piece he wanted you to have, and which particular piece he wanted your wife to have?

A. No, sir; I don't think he did.

Q. When you say Mr. Downs was acting as your locator, was taking you to the corners, did you understand you were under any obligation to take any particular piece of land that Mr. Downs pointed out to you? A. No, sir.

Q. That is, if he pointed out to you one piece that was not satisfactory, you could select another piece?

A. Yes, sir; I so understood it, I was to have my choice.

Q. Now, you say that he did not give you the description, the numbers of the piece you finally selected while you were up there? A. No, sir.

Q. Don't you remember, Mr. Beckley, he gave someone in the party a note in an envelope addressed to Mr. Wells, which contained a description of each piece of land selected by each of the parties?

A. A description of the land we selected while up there?

Q. Yes, sir.

A. Yes, sir; I believe he did do that.

Q. And sent it down?

A. I believe so, but I cannot say positively.

Q. Sent it down with the instructions to go to Mr. Wells and settle with him for the locating fee, give him this letter?

(Testimony of Charles R. Beckley.)

A. Something to that effect.

Q. Do you remember which one of the party it was that had this letter to Mr. Wells?

A. No, I cannot say now.

Q. You have a recollection, do you not, Mr. Beckley, that the way Mr. Wells knew which particular piece you were going to locate on, and your wife, was conveyed to him by message, by that message sent up by Mr. Downs, after you had taken it there.

A. Yes, sir; giving the numbers of the quarter sections we had selected.

Q. Now, at the time you went up to look at the ground, or at any time prior to your original filing, had Mr. Patrick Downs ever suggested to you directly or indirectly what you should do with the land when you got title to it?

A. No, sir.

Q. Had anyone ever suggested such a thing to you?

A. No, sir.

Q. At the time you filed your first papers in the land office, Mr. Beckley, state as to whether or not there was then in existence any agreement or contract of any kind or character, express or implied, written or oral, between you and any person, firm or corporation, by which you had agreed to transfer or convey to such person, firm or corporation, the land you might acquire or any interest in it, to any person they should direct?

A. No, sir.

Q. Was there at that time any agreement with reference to what you should do with this property?

A. No, sir.

Q. Was there any such agreement, or similar

(Testimony of Charles R. Beckley.)

agreement in purport at the time you made your final proof? A. No, sir.

Q. Did any person, firm or corporation have any interest in, or lien upon the land which you acquired from the United States under this timber and stone entry, prior to the time you made final proof upon it?

A. No, sir.

Q. Did you enter this land for the benefit of any other person than yourself? A. No, sir.

Q. It is charged in this complaint, in this action we are trying, Mr. Beckley, that you went and made this entry at the request of and for the benefit of the Barber Lumber Company, James T. Barber, Sumner G. Moon and the other defendants named in this action. Is that true or is it false?

A. It is false. I did not know the Barber Lumber Company at that time.

Q. Well, is it true or false in reference to the other defendants named? A. It is false.

Q. Mr. Barber? A. Yes, sir.

Q. Mr. Moon? A. Yes, sir.

Q. Mr. Sweet? A. Yes, sir.

Q. Mr. Kinkaid? A. Yes, sir.

Q. And Mr. Rand and Mr. Palmer?

A. Yes, sir.

Q. Or anyone else? A. Yes, sir.

Q. You say that charge is false?

A. Yes, sir.

Q. Did you have any agreement at that time with any of these persons, or anyone else, with reference to what you should do with this land?

(Testimony of Charles R. Beckley.)

A. No, sir; nothing at all.

Q. Now, you have said there was some conversation or talk with Mr. Eagleson in reference to the coast company that wanted to buy this land?

A. Yes, sir.

Q. Was that Mr. D'Arville? A. Yes, sir.

Q. Well, do you recall that at or about that time, when you and Mr. Eagleson and members of this party formed what you have referred to as a pool that the plan was to keep that timber intact with the expectation that you could realize more that way than by selling it in individual entries? A. Yes, sir.

Q. And do you recall that this coast company was sort of acting through Mr. Eagleson—or rather, Mr. Eagleson was trying to get a crowd together to sell to the coast company?

A. Yes, sir; that was the impression that I was under at the time, that as its representative, that is, the coast company, he was making these offers—that the coast company was an acquaintance of Mr. Eagleson, and made their offers through him.

Q. Now, did you finally learn, or did it finally develop that the coast company wanted a guarantee from these men of the amount of timber on each claim, which resulted in the breaking-up of negotiations with the coast company?

A. Possibly that had something to do with it; of course the price was the principal thing with me.

Q. Well, it was after Mr. Eagleson had told you, or someone had told you, that the negotiations with the coast company had fallen through, that you took

(Testimony of Charles R. Beckley.)

it up with Mr. Kinkaid?

A. It had not fallen through, it was a question of more money.

Q. They offered you more money?

A. Yes, sir.

Q. Well, did Mr. Eagleson negotiate with Mr. Kinkaid for the sale, or fix a price for your land, or did you do that yourself—you naturally did that yourself?

A. Yes, sir; we naturally did that ourselves, yes, sir.

Q. You stated that you understood that Mr. Kinkaid represented Mr. Rand. You have not any definite knowledge on that, I suppose, have you?

A. Not until that time, the making of this transfer.

Q. Well, do you know now whether he was representing Mr. Rand, or buying for himself and selling to Mr. Rand?

A. I could not say, but I thought he was possibly acting for Mr. Rand.

Q. And you gathered that from the fact that he took a deed to Mr. Rand? A. Yes, sir.

Q. You don't know whether he was buying for himself, and selling to Mr. Rand, or using Mr. Rand's money to buy it? A. No, I could not say.

Q. I notice, Mr. Beckley, that your final proof was made on February 12, 1903, and the deed which has been offered in evidence was made the next day, February 13, 1903. Now, with that in mind, what do you say with reference to the accuracy of the date in

(Testimony of Charles R. Beckley.)

the deed—can you fix that with reference to the time you made final proof?

A. Well, I think it was shortly after final proof was made when I made the transfer, but I could not say how long after.

Q. You could not say whether it was the next day or not?

A. I could not say how long a time elapsed, but it was only a short time.

Q. You said something about a year.

A. Well, I meant a year from the time of my location.

Q. Well, your location was in October, and your deed was made in February?

A. October, 1902, to February, 1903.

Q. It would be four months?

A. Well, I could not say. I was thinking it was nearly eight months.

Q. Well, then, prior to the time you made your final proof, paid in your money to the land office, and got your final receipt, you had had no negotiation with any person except this rumor that there was some one that wanted to buy, when you got your final receipt?

A. Yes, sir.

Q. And so far as any negotiations you had with Mr. Kinkaid were concerned, that was all subsequent to your receiving final receipt?

A. Yes, sir.

Q. You understood it to be the law at that time you had no right to sell until after final receipt was issued, did you not?

A. Yes, sir, I understood that.

(Testimony of Charles R. Beckley.)

Q. And in deference to the law, as you understood it, you took no steps to sell until after you had received your final receipt?

A. That is correct.

Mr. BUNDY.—That is all.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Beckley, I understood you to say that Mr. Harry Eagleson was representing the Coast Lumber Company, that you referred to—is that correct?

A. Well, sir, in an indirect way. He seemed to be spokesman for the company. I could not say it was the Coast Company—I used the word “Coast” as it being a western company; of course, I don’t know the name of the concern, never did.

Q. That is, it was somebody on the coast?

A. Yes, sir, but whether they were Oregon people or not I could not say.

Q. I understood you also to say that Mr. Eagleson was the first person who spoke to you about taking up a timber claim?

A. I think so, yes, sir, that is about locating you mean?

Q. Yes.

A. Why, I could not say positively, because Mr. Sullivan had spoken to me a number of times, so had Mr. H. A. Schmelzel, whose wife went up there with our party.

Q. But Mr. Eagleson had spoken to you before you went up there to locate? A. Yes, sir.

(Testimony of Charles R. Beckley.)

Q. And he was up there at the time locating a claim for himself?

A. Yes, sir. I understood that is what he was there for. Now, if you will pardon me there might be a question—I don't know, it might have been some of his people—I would not say it was him personally, but he was there however and by way of explanation I will say this is the way I came to speak of Mr. Eagleson more forcibly because when I came from Greeley, Colorado, where I had been in the lumber business, I came here for the express purpose of buying out Mr. Eagleson's father, or the Hawkeye Lumber Company—his father had a business that I was figuring on buying, and consequently I got acquainted with his son, and that is why I talked to him about the locating business more than anyone else, and put more stress on what he told me than anyone else. But either he or some one of his relatives were up there at the time we got there to locate. Now, I said Mr. Eagleson was up there, but it might not have been Mr. Eagleson, I could not say now.

Q. Now, how much was offered you by this coast company for your claim?

A. I could not say positively, but it was some less than I sold for.

Q. And how long was that offer made before you did sell, do you remember?

A. Now, I can't tell you. They spoke to me about it a number of times—two or three times, I would say to be safe.

(Testimony of Charles R. Beckley.)

Q. Well, can you recall what length of time, or can you tell the length of time between the conversation with the representative of this coast company, you have referred to?

A. No, I can't, but it was not a great while; there was not a great while, or a great length of time that elapsed. I will say probably a week or ten days.

Q. Between each conversation?

A. That they were talking to me during that time; I was in and out of town, and I don't remember, and the time that elapsed between the final offer by Mr. Eagleson for this company, and the company I sold to, I cannot tell you, but it was not a great while.

Q. Now, this deed that you identified here, which is in evidence, was that deed dated when you sold the property—when you signed the deed?

A. Now, I signed it with that impression.

Mr. GORDON.—That is all.

Recross-examination.

(By Mr. BUNDY.)

Q. Mr. Beckley, was there any definite proposition, or offer, made to you by any coast company, through Mr. Eagleson, or anyone else, or was it simply a general talk among you people, that there would be an offer made by the coast company for the purchase of these claims, under certain conditions, and that the pool was going to hold it a while longer in the hopes of getting the coast company to take it at an advanced price?

A. Why, I understood it to be a sincere offer.

(Testimony of Charles R. Beckley.)

Q. Well, now, made by whom?

A. Mr. Eagleson represented the party that should have made it.

Q. Well, did he tell you he represented the party?

A. No, sir, but he said we could have, as a body—that we could sell as a body, and some of the parties advised the selling of it but I thought we had better hold it.

Q. Now, at the first time Mr. Eagleson spoke to you about making this entry, if he did speak to you, or Mr. Sullivan or Mr. Schmelzel, or whoever it was, did they suggest to you that you make the entry for the benefit of any coast company, or for the Rand Lumber Company, or the Barber Lumber Company?

A. No, sir, nothing of the kind was mentioned whatever.

Q. No one suggested at that time, or at any time, that you make that entry for the benefit of any particular person, firm or corporation?

A. No, sir, none whatever.

Q. Or that you make it for the benefit of any other person than yourself?

A. No, sir. No one suggested that I should make the entry for the benefit of anybody but myself, and that is what I did.

Mr. BUNDY.—That is all.

**[Testimony of William H. Humphrey, on Behalf of
the Complainant.]**

WILLIAM H. HUMPHREY, a witness called on behalf of the complainant herein, United States of America, and after being first duly sworn by the Examiner to tell the truth, the whole truth and nothing but the truth, gave testimony as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Humphrey where do you live?

A. I live in Medford, Oregon.

Q. How long have you lived there?

A. A little over two years—no, not quite but it is about two years.

Q. You lived in Idaho in 1902?

A. I did.

Q. What part of Idaho? A. Boise.

Q. And at that time did you know Mr. John I. Wells of Boise? A. Yes, sir.

Q. And Mr. Patrick H. Downs?

A. Yes, sir.

Q. You took up a claim under the Timber and Stone Act, in the summer of 1902, didn't you?

A. I believe it was in 1902, I don't remember exactly though.

Q. You never took up but one claim under the Timber and Stone Act, did you?

A. No, sir.

Mr. BUNDY.—I object to the introduction of any evidence relative to a timber and stone claim made by this witness, W. H. Humphrey, for the reason

(Testimony of William H. Humphrey.)

it is not involved in this case and that defendants here are not charged with having acquired any land by or through Mr. Humphrey or anyone else, procured from the Government under the Timber and Stone Act.

Q. Who spoke to you about taking up a claim under the Timber and Stone Act first?

A. The first man that spoke to me about that was a young fellow from Minnesota by the name of William Peterson.

Q. Did you have a talk with Mr. Wells about taking up a claim under the Timber and Stone Act?

A. Yes, sir.

Q. What did Mr. Wells say to you about taking up one of those claims?

A. Of course, I can't remember all of the conversation, but the substance of it was that there were some claims to be taken that they would like to have—that they were allowing a certain amount for them.

Q. And was that before you located?

A. Yes, sir.

Q. Was that before you went to look at the claim?

A. Yes, sir, that was before I went to look at the claim.

Q. And were you to locate on any particular claim?

Mr. BUNDY.—I object to that as not calling for any particular conversation.

Q. Well, what did Mr. Wells say about locating

(Testimony of William H. Humphrey.)

you on any particular claim?

A. Well, let me think a while—I can't remember as anything particular was said about it at that time; but he gave me the assurance that there would be a certain amount paid for claims that were taken and located by Mr. Downs at that time, providing they located on these claims that he showed us.

Q. And what were you to do with the claim?

Mr. BUNDY.—We make the same objection.

A. Well, if we sold to them—that is if we got these claims and we sold to them we were assured by Mr. Wells—we were assured by Mr. Wells that we could sell these claims, that they would take them off our hands, providing, we took the claims Mr. Downs showed us.

Q. And was anything mentioned about the amount you were to get for the claims?

A. Well, the amount mentioned was in this way, providing I let them have it, I know I was to make about \$200, as near as I can remember that would be about my profit on the claim.

Q. And did you take up one of the claims that was pointed out to you by Mr. Downs?

A. Yes, sir.

Q. And you subsequently conveyed to some one whom Mr. Wells told you to?

Mr. BUNDY.—I object to that as leading, hearsay, incompetent, irrelevant and immaterial.

A. I did subsequently, yes, sir.

Q. Now, did you locate any people for Mr. Wells, or under any arrangement that you had with Mr.

(Testimony of William H. Humphrey.)

Wells? A. Yes, sir.

Q. Who did you locate?

Mr. BUNDY.—Same objection.

A. I located Dave Thompson.

Q. David C. Thompson?

A. Well, I don't remember about the middle letter, it was David.

Q. Now, will you please state how you came to locate Mr. Thompson?

Mr. BUNDY.—We object to that as being incompetent, irrelevant, immaterial and hearsay.

A. Well, Mr. Thompson had had a talk, I suppose, with somebody in regard to the matter, and he knew that he could make something out of the claim, and he did not have the wherewithal to go ahead with it.

Q. Didn't have what?

A. He didn't have the money, and after a few conversations with me in regard to it he induced me to advance him the money to take up the claim, enough to carry him through from start to finish, which I did.

Q. Well, did you locate him on one of the claims that either Mr. Downs or Mr. Wells told you to?

A. Yes, sir.

Q. And did you advance the money to Mr. Thompson? A. I did, yes, sir.

Q. Or did you get it for him from somebody else?

A. No, I advanced him the money myself.

Q. And what were you to get for advancing him

(Testimony of William H. Humphrey.)

this money?

Mr. BUNDY.—I object to that—who was the arrangement with?

The WITNESS.—The arrangement was with Mr. Thompson.

Mr. BUNDY.—The arrangement was with Mr. Thompson?

The WITNESS.—Yes, sir.

Q. And what money did you advance him?

A. I believe it was \$100, and I think he was to divide what he made on the claim with me.

Q. And did you tell him you could sell his claim the same way?

A. No, sir, I did not have any talk with him on that subject, he seemed to be posted on that part of it himself.

Q. Where did you go to get the description of the land that you located him on?

A. To Mr. John I. Wells.

Q. And did Mr. Wells know what you were going to do with that description?

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial.

A. I think he did.

Q. You told him what you were going to do with it?

A. I can't remember. I think it was thoroughly understood though—I can't remember that I told him that, though possibly I did.

Q. And did you tell Mr. Thompson what he could do with his land?

(Testimony of William H. Humphrey.)

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial.

A. No, I think Mr. Thompson told me—Thompson knew all about that deal, all he wanted was me to guarantee to furnish him all the money necessary to carry him through; but I located him; of course, if he located on that claim he wanted me to see him through with it and the arrangement was he would divide the profits with me; no other arrangements were made.

Q. And do you know whether he did convey to the same parties who Mr. Wells told him to convey to?

Mr. BUNDY.—Objected to as incompetent, irrelevant, immaterial and leading.

A. Why, I can't say as to that, I am sure.

Q. Was there anyone else besides Mr. Thompson whom you induced to enter a timber claim?

Mr. BUNDY.—We object to that as incompetent, irrelevant and immaterial, and assuming that he induced Mr. Thompson to enter a timber claim, which is not the evidence.

A. No, there was no one else that I induced to enter a claim, that I remember of. I may have talked with others about it, but it was never carried through—may have talked with some one about it.

Q. Do you know Mr. Allen?

A. I think so—I don't remember him from the name, but there was another party all right, and it was supposed to be this man Allen.

Mr. BUNDY.—What is that?

(Testimony of William H. Humphrey.)

A. This other party we are speaking of, I suppose his name was Allen, but I am not sure, I can't remember now.

Q. I understood you to say that when Mr. Wells first spoke to you, he said there were a number of claims, that they wanted; now, did he say who "they" were? A. He did not, no.

Q. Well, did he give you to understand who "they" were?

A. No, he did not make any reference to that whatever.

Q. Well, did you have any idea who they were?

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial.

A. Not at that time, I had no idea, no, sir; I never had heard.

Q. Did you understand "they" to mean Mr. Wells or Mr. Downs, or some one they were representing?

A. Well, I could not say as to that; I could not say whether they meant Mr. Wells or Mr. Downs or some other party. I don't remember now.

Q. Now, do you know to whom you sold?

A. I do not know that; I knew the name that was in the deed at the time, but I cannot remember it now.

Q. Now, through whom did you conduct negotiations for the sale of your timber claim?

A. Mr. Pritchard.

Q. Who introduced you to Mr. Pritchard?

A. Well, I could not say who did now.

(Testimony of William H. Humphrey.)

Q. Did Mr. Wells tell you to see Mr. Pritchard?

A. No, Mr. Wells did not take me there, no, sir.

Q. Did he tell you to go and see Pritchard?

A. I believe that he did.

Q. And how much did you get for your claim?

A. Either \$750 or \$800, if I am not mistaken;
I think it was about that amount.

Mr. GORDON.—That is all.

Cross-examination.

(By Mr. BUNDY.)

Q. What was your business, Mr. Humphrey while you were at Boise?

A. Most of the time I was working at upholstering—we were in the upholstering business there.

Q. And you loaned a little money occasionally on the side?

A. Well, I did not make a business of loaning money, the occasion I have spoken of was about all.

Q. Well, you had some money, I understand?

A. Well, it was in this way, I did not have the money myself, but father had a little money and when I wanted to use it I was at liberty to do so.

Q. And how long did you live there before August, 1902?

A. I had not lived there but a short time; I think I came there in April of that year.

Q. It was not necessary, of course, for you to borrow any money to pay for your land?

A. I did not borrow any only from my father in that way; *it not* really my money, it was his, but I was to have it when I had any use for it.

(Testimony of William H. Humphrey.)

Q. And when you made final proof on your own claim you just got the money from your father, and subsequently you sold your claim? A. Yes, sir.

Q. Now, you say the first one that spoke to you about taking up a claim was a man by the name of Peterson?

A. Yes, sir, he is the first man that spoke to me about it, the first I ever knew about it.

Q. Did he say that there were some claims to be taken?

A. Why, he said he had taken one and he had made some money on it and there was a chance for others.

Q. Well, you understood he had taken a claim and had proved up on it and had sold it and made a profit on it? A. Yes, sir.

Q. And that was the idea he conveyed to you?

A. Yes, sir.

Q. So that when you entered your claim you intended to do the same thing?

A. To do the same thing, yes, sir.

Q. To take it, prove up on it, acquire title to it, and then sell it? A. I did.

Q. Of course, to the one that paid you the most for it? A. Yes, sir, which I did.

Q. Now, at the time you made your first filing, or before, did you have any negotiations with any one in regard to selling it—your claim.

A. I had made no promises to anybody.

Q. Or had you entered into any agreement to sell it when you proved up?

(Testimony of William H. Humphrey.)

A. No agreement with anybody of that kind.

Q. This complaint in this lawsuit, Mr. Humphrey, charges in direct terms that the entrymen, I don't know whether you are an entryman or not, made these entries at the request of and in the interest of the Barber Lumber Company, James T. Barber, Sumner G. Moon and the other defendants. Is that true?

A. No, sir, I didn't have any understanding at that time with anybody.

Q. And did you understand at that time that it would be lawful to sell until after the final proof?

A. I did not think of that at the time at all, until after the filing—I didn't know it.

Q. After the filing you learned you had no right to sell until you got your final receipt?

A. Yes, sir, I learned that.

Q. And of course, you knew no one else had any right to sell until after the final receipt had issued?

A. That is what I understood.

Q. And if anybody made proof with the understanding to sell, that the Government would forfeit their title and they would not get any land; you understood the law that way, did you not?

A. I don't know as I understood the law that way, but I understood it was unlawful to bargain to sell before you had the final receipt.

Q. Well, you would not intentionally violate the law?

A. No, sir.

Q. And you did not intend to?

A. No, sir, I did not intend to.

(Testimony of William H. Humphrey.)

Q. You knew of course, it would be wrong and you did not want to lose your money?

A. No, sir, I didn't.

Q. That is, you knew it would be wrong?

A. Yes, sir, and I didn't care about losing my money either.

Q. These other gentlemen, Mr. Thompson and Mr. Allen seem to have entered their claims about a year after you did?

A. I don't remember how long after, but it was afterwards.

Q. It was afterwards? A. Yes, sir.

Q. So at the time Mr. Allen and Mr. Thompson came to you and asked you to see them through in this matter, by furnishing whatever money was essential and necessary, you knew that an entry that was made with such an understanding, or contract, would not be good, didn't you?

A. Why, I knew that, yes.

Q. Now, Mr. Thompson came to you first, did he, and wanted to arrange for a loan?

A. Yes, sir.

Q. Anybody else present besides you and Mr. Thompson at that time? A. I don't think so.

Q. And you have stated substantially what Mr. Thompson wanted you to do? A. Yes, sir.

Q. Just state again.

A. Why, he wanted to take up one of the timber claims—he said he knew he could sell it when he proved up, but he did not have the money to carry him along through with it and he wanted to get

(Testimony of William H. Humphrey.)

money from me; we had several conversations about the matter and I finally told him if he did not have the money that I would advance him the money, to go ahead and take up his claim.

Q. With the understanding that when he sold he would divide the profits?

A. Yes, sir, that is right.

Q. Then you did advance him money under that agreement?

A. Yes, sir.

Q. Now, did you have any other or different agreement with Thompson, other than you have told us about?

A. No, sir, I did not.

Q. Did you have any agreement with anyone else in regard to Thompson's claim?

A. No, sir, but I was assured where he could sell it.

Q. No, I am asking you did you have an agreement with anyone else about this claim?

A. No, sir.

Q. With anybody else?

A. I did not.

Q. Did you understand that Mr. Thompson had already sold his claim before you advanced this money to him?

A. No, he had not sold it.

Q. Well, you understood, didn't you, Mr. Humphrey, that when he went to the land office he would have to testify that he had not sold it?

A. Well, I don't think he had.

Q. No, but you understand that that was the law, that he would be asked that question?

A. Yes, sir.

Q. Now, I will ask you this *would have* advanced

(Testimony of William H. Humphrey.)

this \$400, that is to Mr. Thompson, if you had known he was going to that land office with your money and testify falsely, and make an illegal entry?

A. No, sir.

Q. Well, did you think at the time you advanced him that money, that he was about to make, or was making, an illegal entry? A. No, I did not.

Q. Did he or anyone else tell you anything, or intimate anything to you, which led you to think that Mr. Thompson was making that entry at the request of and for the benefit of any other person than himself?

A. No, it must have been for his own benefit, because he was getting the money out of it.

Q. And you did not understand he was making that entry for the benefit of John I. Wells, or Pat Downs, or for anyone else they were representing, did you? A. No, sir.

Q. Then, your connection with Mr. Thompson's entry was simply as a money lender, as you have stated, under an agreement made with Mr. Thompson? A. Yes, sir.

Q. And to which entry James T. Barber, Sumner G. Moon, John I. Wells or Patrick Downs were not parties, and were not interested in it?

A. Yes, sir, that is the way I understood it, that it was for his own benefit—that I was simply advancing the money to him and he was to divide what profits he got out of it when he sold it for loaning him that money.

Q. You made some little inquiries among his

(Testimony of William H. Humphrey.)

friends, did you not—

A. Oh, I knew him for years in Minnesota—knew who he was.

Q. Now, at the same time you advanced money to Mr. Thompson, did you advance money to Mr. Allen?

A. No, sir.

Q. Was that before or after you advanced the money to Thompson, that you advanced some money to Mr. Allen?

A. No, that was before I advanced money to this man Allen you are speaking of.

Q. That is, you advanced money to Mr. Thompson first?

A. Oh, yes, quite a while.

Q. Now, after Mr. Thompson had proven up and divided the profits with you, then Mr. Allen came to you?

A. No, Mr. Thompson came to me for Mr. Allen.

Q. Oh, Thompson came to see you for Allen?

A. Yes, sir, I supposed it was for Allen, I am not sure; this party that I helped afterwards, I supposed that was Mr. Allen that you are speaking about.

Q. Then Mr. Thompson came to you about Mr. Allen?

A. Yes, sir, he was a friend of Thompson.

Q. Now state what Mr. Thompson told you in reference to Allen, or his friend—of course you did not know Mr. Allen at that time?

A. No, sir. Well, Mr. Thompson came to me and he wanted to know if I would help a friend of his through the same as I did him with money that he wanted to take a timber claim. I did not make him

(Testimony of William H. Humphrey.)

any promises then, I did not know the man, I did not feel like making any promises at that time; but later I agreed with Mr. Thompson that if he would bring the man around so I could see him and have a talk with him—see what kind of a man he was, and if he would vouch for him being a good straight fellow, that I might do it. He said he would vouch for him being a good straight fellow and I told him, I agreed to do the same with this other party that I had with Mr. Thompson, excepting that I did not locate this other man, Mr. Allen.

Q. Did you pay for locating this other man?

A. Yes, sir.

Q. How much? A. \$25.00.

Q. To whom? A. Pat Downs.

Q. And this \$25.00 was a part of the money you advanced to this other man? A. Yes, sir.

Q. And did you advance the other fees as required, when he made final proof at the land office?

A. Yes, sir.

Q. Now, did you have any agreement with reference to this other man, except what you have testified was made between Thompson and yourself?

A. I had the same kind of agreement with him that I did with Mr. Thompson.

Q. Yes, sir, but was there any other party to that agreement? A. No, sir, nobody else.

Q. Was the Barber Lumber Company a party to it?

A. I did not know anything about the Barber Lumber Company.

(Testimony of William H. Humphrey.)

Q. Was Mr. Wells, Mr. Pritchard or Mr. Kin-
kaid a party to it? A. No, sir.

Q. So that your connection with Mr. Allen was
the same as with Mr. Thompson? A. Yes, sir.

Q. He came to you and you simply loaned him so
much money? A. That is right.

Q. And he had a right to borrow, and you had a
right to lend?

A. That is the way I look at it.

Q. And your sole connection with it was that
whenever he sold, the profits were to be divided be-
tween you and him?

A. The profits were to be divided between us, yes,
sir.

Q. Now, at that time did you have any contract
with Mr. Allen or any agreement, or understanding
of any kind with him, before he proved up, in which
you obligated him to sell to any particular person for
any particular sum?

A. No, sir, I never told him at all what he should
do with this claim; he sold it himself and at his own
price.

Q. And that price he sold it at is what you told
him was the current price being paid for those tim-
ber claims at that time? A. Yes, sir—

Q. As you understood it?

A. Yes, sir, as I understood it.

Q. And at the time you had the conversation with
Mr. Thompson, did you have any agreement, con-
tract or understanding with him as to who he should
convey his land to?

(Testimony of William H. Humphrey.)

A. No, sir, I had no contract with Mr. Thompson of any kind.

Q. At the time you advanced money to both of these men, was there any agreement between you and them by which they were obligated to convey this land to anyone you represented or directed, or to Mr. Wells, or Mr. Downs, or to anyone they represented?

A. No, sir.

Q. The understanding was simply that he was to sell it at the current market price obtained at that time, as suggested?

A. Well, I don't remember the exact price, but leaving out the money that was put into it, it left us both a profit of about \$200 apiece on the claim.

Q. Now, do you know—I believe you stated that you did not know of anyone who were buying claims at that time?

A. I did not.

Q. So at the time you advanced the money you expected him to do the same as you did with your own claim, to sell it when an opportunity offered—

A. Yes, sir.

Q. And to the one that paid the most money for it?

A. That is it exactly.

Q. And whenever they had an opportunity to sell it?

A. Yes, sir.

Q. That is, if they could have found someone who wanted it, and they would have paid him a good price for his claim, that is what you wanted?

A. That would have suited me all right, yes.

Q. And there existed no agreement between you and Mr. Thompson, or between you and Mr. Allen,

(Testimony of William H. Humphrey.)

that would have prevented them from selling their land to the highest purchaser?

A. No, sir, nothing in the world.

Q. And there wasn't any agreement that prevented them from selling to anyone?

A. Why, they located the land and they had a right to sell to whoever they wanted to.

Q. The only condition was you were to have half the profits?

A. That is all.

Q. To the highest bidder—to the one who would pay them the most?

A. That is right.

Q. The more they got the more you got?

A. The more they got, the more I got.

Q. Now, did you understand when you loaned that money to these parties, that either Mr. Thompson or Mr. Allen were under any obligations whatever to sell the title that they were acquiring from the Government to either Mr. Wells, Mr. Downs, L. M. Pritchard, John Kinkaid, the Barber Lumber Company, Albert E. Palmer, James T. Barber, Sumner G. Moon, William Sweet, Horace S. Rand, or either of them, or to any person representing them?

A. I don't think they were bound to sell to any of them, or to anybody else.

Q. Well, did you understand there was any contract, express or implied, by which these men agreed or promised to sell their timber claim to either of the defendants in this action, or the gentlemen above mentioned?

A. I don't think so; I think the only thing was they understood where they could get a certain price.

(Testimony of William H. Humphrey.)

Q. Well, everybody knew that, didn't they?

A. Yes, sir, that was pretty well known—and I think they were at liberty to sell to anyone that would offer them the most money.

Q. When you say they knew where they could sell for a certain price, you mean there was common knowledge around that country at the time that there was a market for these timber claims, where you could sell timber lands for a certain price?

A. Yes.

Q. Timber was not sold at that time at so much per thousand, but so much per claim?

A. Yes, sir.

Q. And there was an established market price being paid for timber claims up there?

A. Yes, sir.

Q. And it was generally known that these gentlemen, or anyone else, who had timber claims could sell them for a certain price?

A. Yes, sir.

Q. Well, is that all you meant by saying that you understood that Mr. Wells or Mr. Downs, or some one they spoke of would buy these claims?

A. Why, yes, sir, Mr. Wells told me they would take those claims at a certain price; he told me what they would pay for them, and that they would take them.

Q. Well, was anything said at that time as a condition of your being located, or in connection with your being located, which obligated you, or the other gentlemen to sell to the locators, Wells or Downs, or to the persons they represented, or to anyone?

(Testimony of William H. Humphrey.)

A. No, there was no promise at all in regard to that.

Q. Well, was there any talk about it?

A. No, there was no talk of their selling. The understanding was, as I told you before, that they knew, or were supposed to know, where they could dispose of these claims at a certain price.

Q. Now, was that knowledge that they could sell or dispose of these claims at a certain price, based upon any conversation, talk or agreement, with Mr. Wells or Mr. Downs, or anybody else, or was it based simply upon common knowledge that you speak of?

A. It was based on what Mr. Wells told me in my case, when I took the claim.

Q. What was that?

A. That they would pay a certain amount for that claim after I had proven up on it.

Q. Did Mr. Wells say if he located you, or if Mr. Downs located you, that the party whom they located was to sell to them at that price?

A. Never did, no, sir.

Q. Then all there was to it, was a statement by Mr. Wells to you that they would be in the market for them when you had secured title?

A. Yes, sir, they assured me I could sell to them at that price, but then that did not prevent me from looking for other purchasers.

Q. Now, at the time Mr. Wells told you that they would take it at this price, did you agree to sell it?

A. I did not.

Q. Did Mr. Thompson or Mr. Allen, as far as

(Testimony of William H. Humphrey.)

you know, agree to sell?

A. No, sir, not as far as I know of they did not.

Q. Then Mr. Wells' conversation was nothing more than a statement, if you could not find anyone else to take the claim at a higher price, when you acquired title and had a right to sell, that they would take it at that price?

A. That is the way I understood it, yes, sir. I understood that I was at liberty to look for other buyers, although there was no understanding in regard to that, he merely assured me they would pay that amount, and that I had the liberty and the right to sell to anyone else if I could get more than he offered.

Q. Mr. Humphrey, what I am trying to get at is this: In this talk you had with John I. Wells, you were talking to him at one time as a locator, were you not—that is, he was engaged in the business of locating people on timber land?

A. Yes, sir.

Q. As you understood it, in partnership with Mr. Patrick Downs?

A. Yes, sir.

Q. And they were charging you and I suppose you paid them the regular locating fee, did you not?

A. Yes, sir, I paid them their fee.

Q. And Mr. Wells was simply promoting his business—that is, whenever he could find people who wanted to locate, he located them and charged them a locating fee?

A. Yes, sir, that is right—he and Mr. Downs were partners in that business.

(Testimony of William H. Humphrey.)

Q. Now, as a method of prevailing upon you to exercise your right to enter a timber and stone claim, he assured you that there would be a market for it, that is the timber claim, at a price which would yield a profit?

A. Yes, sir, that is it exactly.

Q. But as I understand you, you made no promise to sell? A. No, sir.

Q. To anyone? A. No, sir.

Q. And Mr. Wells, Mr. Downs, or any of these parties, made no promise to buy, other than the assurance that there would be a market?

A. That is all.

Q. So at the time you filed your first papers you had not agreed to sell to Mr. Wells or to anyone else? A. No, sir.

Q. Or to transfer your claim to anybody?

A. No, sir.

Q. And at the time you made your final proof you had not so agreed with anybody, or with either of the defendants to sell your land?

A. I had not, no.

Q. And when you did finally sell you did so without any previous arrangement whatever with anybody? A. I did, yes, sir.

Q. Now, coming back to the arrangement you had with Mr. Thompson—you were asked if you located Mr. Thompson under any arrangement with Mr. Wells and you said you did.

A. No, not Thompson, you are mistaken.

Q. No, I am not mistaken; you are mistaken.

(Testimony of William H. Humphrey.)

A. Mr. Thompson had already made arrangements—he had all of his arrangements already made, I merely agreed to furnish Mr. Thompson money sufficient to carry him through the deal. He said he knew where he could sell, but he did not have the money to carry it through.

Q. Well, that is what I understood that you said you did locate Mr. Thompson under an agreement you had with Mr. John I. Wells—

A. No, no, you are mistaken.

Q. Well, that is not true?

A. No. Under the assurance that they wanted to buy—there was no agreement, that is the way I understood it.

Q. Now, you say that Mr. Thompson was the man that came to you? A. Yes, sir.

Q. Did you then go to Mr. Wells, or were you *relying* on the assurance Mr. Wells had given you before that?

A. I think I had a talk with Mr. Wells after Mr. Thompson came to me, I am sure I did.

Q. Before you advanced the money?

A. Yes, sir.

Q. And at that time, did Mr. Wells assure you there would be a market for this timber land—these timber claims? A. Yes, sir, he did.

Q. And was there any agreement made between you at that time that they would buy it?

A. Yes, sir, they said they would buy.

Q. That they were in the market at that time?

A. Yes, sir.

(Testimony of William H. Humphrey.)

Q. Were you acting for Mr. Thompson?

A. Well, I was acting for myself, principally, in that deal; I was helping Mr. Thompson out.

Q. Mr. Thompson did not tell you he had sold his claim before you advanced him the money as you have stated?

A. He did not tell me anything of the kind.

Q. Mr. Wells did not tell you that?

A. No, sir.

Q. And you did not assume to sell his claim for him?

A. No, sir, he sold it himself.

Q. Well, then, at the time you advanced Mr. Thompson the money, so far as you know, had he entered into any sort of agreement, or contract with anyone, to sell that claim when he got title thereto?

A. Not so far as I know, no.

Q. And at the time you advanced Allen the money, had Mr. Allen entered into any agreement or contract of any kind to sell this land he was entering, so far as you know?

A. No, but I told him I knew where he could sell it, parties that would take it.

Q. Oh, well, everybody knew that.

A. Well, yes, as you say, everybody understood that—that was general talk around there.

Q. Understood there was a market for timber claims?

A. Yes, sir.

Q. Was there any agreement—any other agreement or any other understanding between you and anybody else with reference to your claim, or between Mr. Allen and Mr. Thompson and anybody,

(Testimony of William H. Humphrey.)

that you know of other than this general understanding that obtained there during that time that they could be sold?

A. There was no understanding, no, sir.

Q. You mean there was no understanding other than the general understanding that there was a market for timber claims?

A. Well, there was a little more than that. There was no understanding, but I merely had the assurance from these parties that they would buy those claims but they were not bound—no one bound themselves.

Q. Now, who did you understand Mr. Wells meant when he said “they” would buy it?

A. I never gave that a single thought but I supposed they were representing some company.

Q. But you didn’t know?

A. I didn’t know, no.

Q. And that is true when your claim was under consideration as well as when the other two men’s claims were under consideration?

A. Yes, sir.

Q. Mr. Gordon asked you a question as to whether or not you induced anyone else to enter a timber and stone claim besides Mr. Thompson, and you said one other. Did you mean to say that Mr. Allen and Mr. Thompson entered these claims at your request? Or that you induced them to do so?

A. No, I did not induce them to do so. This Allen—well, no, sir, that is just the amount of it, I did not induce them to do it, or anybody else.

(Testimony of William H. Humphrey.)

Q. They came to you? A. Yes, sir.

Q. And you did not go to them?

A. No, sir.

Q. You were not out inducing people to enter timber claims? A. No, sir.

Q. You wasn't in that business?

A. No, sir.

Q. They simply came to you and your connection with the matter was you were trying to assist them—that is true?

A. Yes, sir, that is true.

Q. Did you ever at any time, have any agreement or arrangement, with John I. Wells, or Pat Downs, or L. M. Pritchard, or any of the other defendants in this action, by which you were acting for them in inducing and persuading people to enter timber and stone claims?

A. I don't think that I did; I can't remember of any instance now where I did.

Q. Well, my question was a pretty broad one, if you ever had any such agreement of course, you would know it. Were you ever working for Mr. Wells, or Mr. Downs, or the other defendants?

A. No, sir.

Q. Were you ever employed by them to drum up entrymen? A. No, sir.

Q. Well, did you ever have any agreement by which you went out on the streets and induced and persuaded people to pay you \$25.00 to locate them on a timber and stone claim?

A. I believe there was one party that I told about

(Testimony of William H. Humphrey.)

it—I think it was Mr. McLaren—I told him about it.

Q. Well, you told him about it—that he could get a timber claim? A. Yes, sir.

Q. Through Downs or Wells?

A. Yes, sir, but that was through some other party, that was not through Pat Downs or John I. Wells, so that had nothing to do with this case.

Q. Let us understand this: “Did you ever at any time have any agreement or contract with Mr. Wells, Mr. Downs, Mr. Kinkaid, Mr. Pritchard or the Barber Lumber Company, or any of the other defendants in this suit, by which you induced and persuaded people to exercise their right under the Timber and Stone Act”? A. No, sir, never.

Q. Were you ever paid by any of them for doing so? A. No, sir, not a cent.

Q. For procuring people— A. No, sir.

Q. To make these entries? A. Never.

Q. Did you ever try to procure people to make entries for them or anybody else?

A. No, sir.

Q. Did you ever have any connection with the timber and stone entries involved in this action except your own and loaning money to Mr. Thompson and Mr. Allen, about which you testified?

A. No, sir.

Q. And those loans were made to Mr. Allen and Mr. Thompson themselves and not through Mr. Wells or Mr. Downs, or anyone else connected with this suit? A. Yes, sir, that is all.

Q. Counsel asked you a question whether or not

(Testimony of William H. Humphrey.)

you took up a claim and subsequently conveyed it to persons that John I. Wells told you to, and you said yes. Now, did you mean to say that Mr. Wells was dictating to whom you should convey and sell your land? A. No, sir.

Q. I didn't think you did when you answered the question. What did you mean?

A. I made up my mind to go and sell it to these parties he told me to go to and close up the deal.

Q. But you were not acting as his servant or employee, anything like that in doing so?

A. No, sir.

Q. Or for him in any way?

A. No, sir.

Q. Or under any previous agreement or understanding you may have had with him?

A. Oh, no.

Q. You simply went to the place where he told you you could sell it?

A. Yes, sir, he told me when I got ready to close up the deal—ready to sell it to come to him, and I went to him and he sent me to Mr. Pritchard.

Q. Now, in answer to a question asked by Mr. Gordon whether or not Mr. Wells told you they would take all of the claims located by Mr. Downs, you said, "Yes." Now, I don't think you quite meant that. You said they would take—that is, he said that they would take claims located by Mr. Wells and Mr. Downs—did it make any difference who they were located by—did you mean it that way?

(Testimony of William H. Humphrey.)

A. No, I did not mean that he would only take everything located by Mr. Downs, not that, certainly; simply that Mr. Downs was locating the claims that they took.

Q. Well, you did not mean to say then, in answer to Mr. Gordon's question, that he told you they were only taking such claims as were located by Mr. Wells or Mr. Downs?

A. No, I didn't mean that.

Q. As a matter of fact, they were taking claims located by other people?

A. Yes, sir.

Q. Taking claims located by you?

A. Yes, sir.

Q. What I am trying to get at is, did the people whom Mr. Wells was representing, if anyone, confine themselves to the claims that Mr. Downs were locating, or were they taking claims located by other people?

A. No, sir, I did not intend to convey that idea.

Q. They were taking claims located by other people as well?

A. Yes, sir.

Q. And your understanding all the way through was that Mr. Downs was in the locating business on his own behalf, and every one was paying him for locating them?

A. Why, yes—Mr. Downs had told me at different times that he was locating, and getting his pay for locating.

Q. From people whom he was locating?

A. Yes, sir.

Q. You did not understand he was being paid

(Testimony of William H. Humphrey.)
by some company for locating people?

A. No, I know he was not.

Q. And you did not mean to say so, in your evidence here, as I understood you?

A. No, I did not mean to carry that idea at all.

Q. Now, you were asked the question, if you located some people for John I. Wells and you said you did, Mr. Thompson. Now, I don't quite see how you located him for Mr. Wells.

A. Well, I can explain if it don't take too many words.

Q. You may explain.

A. It was under his—that is, he described the land, that they were going to buy it, and it was going to be this piece, if they had the piece they wanted, and he described this to me so I would find it, if I could find another party to locate him right on the land. I think that is the way it was.

Q. That is, the particular piece was selected by Mr. Wells?

A. Yes, sir.

Q. But did he pay you for doing this?

A. No, sir.

Q. Were you working for him?

A. No, sir.

Q. Did anybody pay you for doing this? Except Thompson?

A. No one at all.

Q. Then, as I understand it, Mr. Wells knew there was a piece of land there that there would be a market for and he wanted to buy it?

A. Yes, sir.

Q. So you went on and made the location without

(Testimony of William H. Humphrey.)

assuming to sell it to Mr. Wells on behalf of Mr. Thompson, did you? A. Yes, sir.

Q. You never assumed to act for either Mr. Thompson or Mr. Allen, in selling their timber claims, did you? A. No, sir.

Q. They sold their own?

A. They sold their own.

Q. Did you go to the land office with either Mr. Thompson or Mr. Allen when they made their first filing?

A. Why, I went with Mr. Thompson as a witness.

Q. Did you go there at the time they filed their first papers at the land office?

A. I don't think I did. Did they require a witness then?

Q. No. A. Then I did not go.

Q. You had of course learned through your own filing that at the time they made their first filing, they had to swear that no person, firm or corporation, had any interest in the entry they were making, that they were making it for their own individual use and benefit? A. Yes, sir.

Q. Now, with that understanding of the law, Mr. Humphrey, you went to the land office and made the sworn statement required, in which you swore among other things that you had not made any agreement at that time with any person, firm or corporation by which the title you might acquire would inure to the benefit of anyone other than yourself?

A. Yes, sir.

Q. That statement was absolutely true when you

(Testimony of William H. Humphrey.)

made it? A. Yes, sir.

Q. And was true when you made your final proof?

A. Yes, sir.

Q. Now at the time Mr. Thompson made his filing in the original application to purchase, did you know and do you now know of anything, of any agreement at any time which would have made that statement of Mr. Thompson's untrue? A. No, sir.

Q. At the time Mr. Allen filed his first statement, did you know and do you now know of anything that would have made such a statement in his behalf untrue? A. No, sir.

Q. At the time Mr. Thompson made his final proof did you know, and do you now know, of any agreement, or anything, that would have prevented him from honestly testifying that he had not entered into such an agreement? A. No.

Q. And at the time Mr. Allen made his final proof did you know, or do you now know, of any agreement, or any fact that would have prevented him from making a similar statement truthfully?

A. No.

Q. So that you don't want to be understood, from your evidence here, Mr. Humphrey, as far as you know, that either Mr. Thompson or Mr. Allen, to whom you advanced money, made these entries for the benefit of Mr. Wells, Mr. Downs or anyone they represented? A. No.

Q. And so far as you know they entered them without any agreement by which any person, firm, or corporation was to acquire any interest in or lien

(Testimony of William H. Humphrey.)

upon the land they were about to take?

A. That is right.

Mr. BUNDY.—That is all.

Redirect Examination.

(By Mr. GORDON.)

Q. How much money did you loan Mr. Thompson?

A. I cannot state the amount exactly, whatever was necessary to pay his locator and his expenses, and at the final proof, whatever amount was required to pay for his land.

Q. You loaned Mr. Thompson enough money to pay his locating fees, and his expenses at the land office when he made his entry, and his final proof, is that right?

A. Yes, sir; I paid his expenses, of course, when I went up and located him.

Q. His buggy expenses, you mean, and hotel expenses?

A. Yes, sir.

Q. And you paid the locating fees?

A. Well, that came out of it—came out of the deal.

Mr. BUNDY.—You located him yourself, did you?

The WITNESS.—Yes, sir.

Mr. BUNDY.—And you charged the regular price?

The WITNESS.—Yes, sir.

Q. Did you give Mr. Wells the \$25 when you located him?

A. Not for Mr. Thompson, I did not.

Q. Did you for Mr. Allen?

(Testimony of William H. Humphrey.)

A. Yes, I think that he was the man.

Q. Then you gave Mr. Thompson the money to make his final proof? A. Yes, sir.

Q. About \$400? A. Yes, sir.

Q. And did he give you a note for that amount?

A. He did not.

Q. And when did he pay that back to you?

A. Well, he paid me back as soon as he turned the property over to these parties.

Q. What parties? A. Mr. Pritchard.

Q. And did he turn it over the day that he made his final proof? A. I believe he did.

Q. Did you go with him to Mr. Pritchard's office that day? A. Yes, sir.

Q. And was your money kept out by Mr. Pritchard and did he give the balance to them, how was that done?

A. Why, it was divided up right there—I can't state exactly as to that now, but it was divided right there in the office.

Q. How much did you get that day from Mr. Pritchard? A. I can't tell you.

Q. Did you get \$100 or \$500?

A. Well, I got my money back and half of his profits whatever amount that was, I cannot state the amount.

Q. And did you go to Mr. Pritchard's office with Mr. Allen, too? A. I did.

Q. And the money you had advanced to him was taken out and given to you then? A. Yes, sir.

Q. You are sure that is the way of it?

(Testimony of William H. Humphrey.)

A. I know I got it right there in the office, but I don't remember exactly what the conversation was or how it was done, but I know that is the way I did and I got my money there at the office at that time.

Q. The day they made their final proof?

A. On the same day, yes, sir.

Q. You took the certificates direct from the land office to Mr. Pritchard's office, did you?

A. Yes, they did.

Q. And you went with them? A. Yes, sir.

Q. Now, there has been a good deal said about the market for this timber. When you located, what market did you know there was for that timber?

A. The assurance that I had from John I. Wells that these people were buying these claims and were ready to take them and would take them.

Q. What claims?

A. Any claims they knew about there and wanted them.

Q. Well, they had not been located when you got yours? A. When I proved up they had.

Q. I am talking about when you had your first talk.

A. I went to Pat Downs and I supposed he located me on the claim they wanted.

Q. Well, didn't he tell you that was the claim they wanted? A. I believe he did.

Q. And when Mr. Thompson came to you to see if you would advance him the money didn't you know at that time that that is what was going to be done with this claim?

(Testimony of William H. Humphrey.)

A. I did not know, but I supposed it was.

Q. Would you have loaned him the money if you had not had that understanding?

A. If I had not known where he could sell or where he could dispose of it right there and I had not had the assurance that they would take it, I would not have loaned him the money.

Q. Therefore you went to Mr. Wells and got a description of the claim to locate Mr. Thompson on that he assured you he would take when final proof was made?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. The same way with Mr. Allen?

A. No, not the same way with Mr. Allen, Pat Downs located him.

Q. Who did you talk with besides Mr. Allen when you let him have that money?

A. I don't think I talked with anybody.

Q. Did you know Mr. Allen?

A. I believe Pat Downs assured me himself that he had located this man Allen on one side of the claims they wanted, so I knew I was all right.

Q. Then it was that you loaned him the money?

A. Yes, sir.

Q. And you knew of no other market for timber claims except through Mr. Wells and Mr. Downs, did you?

A. I did not know of any then, no, sir.

Q. Now, what was that price that you, Allen and Thompson got for your claims, wasn't it \$600?

A. I thought it was more than that.

(Testimony of William H. Humphrey.)

Q. Was it \$650?

A. If you will tell me what it cost to prove up, I will tell you.

Q. Well, as near as you can tell it—it cost \$12.50 at the land office and \$7.50 at the land office, and then the locating fee and then the \$400 at the land office, that makes about \$420, at the land office.

Mr. BUNDY.—It would be about \$450 in round numbers.

The WITNESS.—Well, that would be about \$650—yes, I think about that—they got about that out of it, I think.

Q. And do you know whether or not all the money that either Thompson or Allen got from Mr. Pritchard that day, as their share was an even hundred dollars?

A. No, I could not swear to that; there might have been some other money handed them for what I know; I didn't see it though.

Q. What money did you see when you were at Mr. Pritchard's office that day?

A. I saw the money I got out of it.

Q. Did you see the money the others got out of it?

A. Yes, sir; but I didn't count it.

Q. Did Mr. Pritchard give you your money, or did he give it to Mr. Allen and Mr. Allen turned it over to you?

A. Well, the money was counted out there, I was watching that I got my own, all right.

Q. Well, did Mr. Pritchard count out a pile for you and a pile for each of them?

(Testimony of William H. Humphrey.)

A. Come to think of it, he did.

Q. In other words, Mr. Pritchard knew you were to get a certain amount of that money?

A. Yes, sir; I told him about it; he knew it.

Q. He knew it? A. Yes, sir.

Mr. BUNDY.—You told him about it?

The WITNESS.—Yes, sir; he understood I had advanced money and that we were to divide whatever profits they got out of it.

Q. You say Mr. Pritchard knew that?

A. Yes, sir.

Q. When did you tell Mr. Pritchard that?

A. I don't know when—I think it was right there in the office—I had no talk with him whatever before that that I know of.

Q. Had you sold your own land to Mr. Pritchard before that time?

A. Yes, sir; long before that time.

Q. Now, as I understood you to say, Mr. Downs told you that he had located Mr. Allen on one of the claims that they wanted to purchase, or would take, something to that effect?

A. I think so, that he had located this man on one of the claims they wanted; I know I felt that it was all right; I can't say exactly whether I was assured of that by Wells or Downs, I could not say to save me. But I was assured that I was all right, and I felt certain there was no question but what they wanted it before I advanced the money; I knew there was a market for it that it could be sold. I knew I was on the safe side.

(Testimony of William H. Humphrey.)

Q. Did you pay Mr. Downs the locating fee?

A. Yes, sir.

Q. And other expenses?

A. I cannot remember now whether I advanced him money to pay his expenses or not. I remember I settled with Mr. Downs, paying him \$25 for his location fee. This fellow was busy some place, he was working—in fact nothing was said about it, anyway. I knew that I did settle with Mr. Downs and he knew it, for locating him.

Q. Now, was that conversation had with Mr. Downs before Mr. Allen had filed his first papers in the land office?

A. Well, now; I can't remember that; I can't honestly say right now, just at the time I was assured of that.

Q. Who brought Allen to you?

A. Mr. Thompson—Dave Thompson.

Q. And did you advance him the money to pay his first expenses in the land office?

A. I think I did.

Q. And how much was that, do you remember?

A. I don't remember now.

Q. Was it \$7.50 or \$12.50?

A. It was something like that, whatever was necessary.

Q. And you did not advance all of this money at one time; you did not advance the money to make final proof and to file, at the same time?

A. No, sir; I didn't.

(Testimony of William H. Humphrey.)

Q. You remember making two advances to Mr. Allen?

A. I must have done it that way; I know I did not advance the money to prove up on until he got ready to prove up.

Q. And before you loaned him the money you went to see Mr. Downs or Mr. Wells, to see whether the claim he had or was to take was all right and was one of them that they would purchase?

A. Yes, sir.

Mr. GORDON.—That is all.

Recross-examination.

(By Mr. BUNDY.)

Q. Now, Mr. Humphrey, did you ever know John I. Wells to buy a timber claim in your life?

A. No.

Q. Did you ever know of Pat Downs buying a timber claim in your life? A. No, sir.

Q. Did you ever know of Pat Downs or John I. Wells, or either of them buying timber claims for anyone else in your life? A. No.

Q. Then what do you mean by telling Mr. Gordon that the only market you knew up there was Wells and Downs at that time?

A. I didn't—if I did I did not intend to.

Q. I don't think you did, but he leads you along and you answer questions that you don't intend to answer.

A. Now, I want to be honest in this matter.

Q. I think you do myself, but you don't pay particular attention—close enough attention to the ques-

(Testimony of William H. Humphrey.)

tions, and I think you are testifying to things you don't intend to. Now, Mr. Gordon asked you the question if you knew of any other market for timber land at that time except Mr. Downs and Mr. Wells, and you said you did not.

A. Well, whoever these claims were going to was the market.

Q. Do you know whether Mr. Downs or Mr. Wells represented anybody at all in the buying of these claims?

A. Well, sir; I did not know that; all I know is the money came for the claims that were sold.

Q. Through Mr. Wells or Mr. Downs?

A. No.

Q. Do you know of a single claim those two men ever bought? A. No, sir; I don't.

Q. Do you know of a single claim they ever advanced money for?

A. No, I do not know that, either.

Q. Mr. Wells and Mr. Downs, as you understood it, were engaged in the business of locating people on timber claims? A. Yes, sir.

Q. That was generally known about Boise?

A. I think so.

Q. That that was their business?

A. Yes, sir.

Q. Now, do you mean to testify that you thought or believed or had any information that led you to think that these men were locating for any company,

(Testimony of William H. Humphrey.)

or for anybody except carrying on their own business?

A. That led me to even think that they were.

Q. What is that?

A. You mean to say if I had any reason to think they were doing any business for any one else?

Q. Did any one tell you that?

A. Well, I had no evidence they were doing business for anyone else, no.

Q. Now, I don't suppose you want to testify to something you don't know anything about. Do you mean to testify now that those men were acting for anybody else in locating these timber claims?

A. Why, I don't know that they were acting for anybody else, in fact, I don't know how I could know.

Q. Well, did they ever tell you that they were acting for anybody else, if so, who?

A. Yes, sir, I think Mr. Wells told me that they had a company that was taking these claims.

Q. Yes, sir, taking these claims, but did he tell you they were locating people for them?

A. No, sir.

Q. Did anybody ever tell you that?

A. No, I can't say that anybody ever did tell me that.

Q. Of course, buying claims and locating people upon them are different things. I am addressing myself to locating people upon these claims. Did Mr. Wells or Mr. Downs, or anybody else, ever tell you they were working for anybody except the entry-men themselves who paid them for being located?

(Testimony of William H. Humphrey.)

A. I can't say that they did. As I told you a minute ago—no, they were not working for them, they were locating these people and these people were taking claims, I can't swear that he said they were working for any firm, but this company or whoever it was were buying the claims that they located.

Mr. GORDON.—You mean the company that were buying these claims up, were buying the claims that Wells and Downs located?

The WITNESS.—Yes, sir.

Q. Well, they were doing an extensive business?

A. Yes, sir.

Q. And anybody that wanted a claim around there would go to Pat Downs possibly?

A. Yes, I suppose so.

Q. And I suppose Pat Downs located about 95% of the claims up in that basin?

A. Yes, sir.

Q. And of course, anybody buying timber claims, of anybody in that country, would have to buy claims located by Pat Downs?

A. Oh, yes.

Q. Now, other than the circumstances, the facts, that there was a company buying claims that they located, do you know of any other fact which would connect the purchaser of the claim with the name of Wells and Downs as locators?

A. No.

Q. Now you said before you loaned the money to these men, you went to these gentlemen to find out if the claim to be located was one for which there would be a market?

A. Yes, sir.

Q. Did you do anything more than simply to go to them and find out if the claim which Allen had lo-

(Testimony of William H. Humphrey.)

cated was of a kind and character which the company would buy?

A. Nothing more than to have the assurance that they would buy that claim.

Q. What is that?

A. Nothing more than the assurance that they would buy the claim when he got the right to sell.

Q. Who would buy the claim?

A. Why, whoever was buying the claims.

Q. Well, you knew Wells and Downs were not buying the claims?

A. Well, they were representing some one that was.

Q. What made you think so?

A. Why, I had every reason to think some company—I almost knew those people themselves were not buying claims.

Q. Don't you know they were not buying at all for anybody?

A. Why, yes, sir.

Q. Then, how did you expect Mr. Wells and Mr. Downs were going to buy the claim?

A. Well, they were not buying them, but they knew who would buy them though, and they knew this claim was one they would buy.

Q. Who? A. This company.

Q. What company?

A. The company they were representing.

Q. Were they representing any company?

A. I suppose so, people were getting their money out of the bank.

Q. Yes, but I want to know where you got the

(Testimony of William H. Humphrey.)

idea that Mr. Wells and Mr. Downs represented some company. Now what made you think Mr. Downs and Mr. Wells were representing anyone?

A. Now, that is a pretty hard question for me to answer, you know. I don't know what made me think so, but I felt sure that they were.

Q. Well, do you know anything about it of your own knowledge? A. No, sir, I do not.

Q. You knew, did you not, Mr. Humphrey, that no timber company would desire to purchase any claim except a timber claim—I mean by that, one that had timber upon it of a sufficient amount to make it desirable?

A. Why, that is what I supposed.

Q. Well, you knew it, didn't you?

A. Oh, I think so.

Q. Now, when you went to Mr. Downs to find out about the claim, is it not a fact you went to find out whether or not Mr. Allen had a claim of the kind and character that was being bought up in the market?

A. Yes, sir, I—

Q. So there would be a market for it?

A. Yes. That is about the amount of it.

Q. Well, when you went to Pat Downs to make inquiry, Mr. Downs simply informed you, gave you the assurance, that Mr. Allen's claim was a good one and one that he could assure you would be marketable—is not that the sum and substance of what he told you?

A. Well, I am getting kind of rattled—a little bit rattled on this thing now. Why, yes, that would

(Testimony of William H. Humphrey.)

be the amount of it.

Q. And if Mr. Down's had told you that Mr. Allen's claim was no good, of course, you would not have advanced him any money on it? A. No.

Q. Or if he had told you there was but little timber on it, you probably would not have advanced the money? A. No, sir.

Q. And the fact is, you went to Mr. Downs to find out whether Mr. Allen had a marketable claim, isn't that about it?

A. That is about it, yes, sir.

Q. And Mr. Downs assured you he had?

A. Yes, sir.

Q. I am relying on that you advanced him the money? A. Yes, sir.

Q. Now, you have already testified, Mr. Humphrey, that you did not know, didn't know then and don't know now, of a single claim that Pat Downs ever bought himself or anybody else, that is right, is it not? A. Yes, sir.

Q. And you never did know, or you don't know now of a single timber claim John I. Wells ever bought for himself or anybody else?

A. That is right.

Q. The timber claims which were filed on in the fall of 1901 and for which final receipts were given along in the summer of 1902, and which were sold there at the time you made yours were mostly bought by L. M. Pritchard?

A. I don't know that they were mostly, but the ones I had any experience with were bought by L. M.

(Testimony of William H. Humphrev.)

Pritchard.

Q. And for whom L. M. Pritchard was acting, you don't know? A. No.

Q. You didn't know then, and you don't know now?

A. No, sir, I don't know now.

Q. And you didn't know then?

A. No, sir.

Q. And whether Mr. Pritchard was acting in connection with Mr. Wells and Mr. Downs, you don't know? A. No, sir.

Q. You don't know now?

A. No, nothing more than I was directed by Mr. Wells to go to Mr. Pritchard and close up the deal and get my money, and I did so.

Q. And you went there and sold your claim and got \$650?

A. Well, I don't know the amount now.

Q. \$750? A. Something like that.

Q. And when you went with these other gentlemen, Mr. Allen and Mr. Thompson, you told Mr. Pritchard you had advanced the money to them?

A. Yes, sir.

Q. And the money was divided then and there?

A. Yes, sir.

Q. Right there in Mr. Pritchard's office?

A. Yes, sir, it was.

Q. Now when you went up to locate your own claim, did you make an arrangement with Mr. Downs for his fees before you located?

A. Before I went up?

(Testimony of William H. Humphrey.)

Q. He told you what he would charge?

A. Yes, sir.

Q. And you paid him? A. Yes, sir.

Q. You considered Mr. Downs an expert cruiser and woodsman? A. Yes, sir.

Q. That is what you were paying him for?

A. Yes, sir.

Q. Did you feel that you were working for Mr. Downs or Mr. Downs was working for you?

A. Well, in that case he was working for me.

Q. And if the claim that Mr. Downs had attempted to locate you on had been unsatisfactory to you, you would have insisted on another?

A. Yes, sir.

Q. What I am trying to get at is, Mr. Downs was simply selecting good timber claims which had enough timber on them to make them marketable?

A. Yes, sir.

Q. You did not understand you were going up there for Mr. Downs to use your right for the benefit of Mr. Downs? A. Why, no, sir.

Q. Or anybody else?

A. No, sir, nobody but myself, for my own benefit, and it was my own deal, the property was mine.

Q. And you did not understand at the time that you were paying a representative of some lumber company to locate you upon some land for the benefit of some lumber company, did you?

A. No, sir.

Q. And you did not understand when you located Mr. Thompson that you were acting for some lumber

(Testimony of William H. Humphrey.)

company and locating Mr. Thompson upon land for the benefit of some lumber company, did you?

A. No, sir, I was not acting for anybody but myself.

Q. And when you advanced the money to Mr. Allen and paid Pat Downs for locating him, \$25, you did not understand that you were paying a representative of some lumber company?

A. No, I paid him for Mr. Allen.

Q. You paid him for Mr. Allen?

A. Yes, sir.

Q. Now, do you wish to be understood as testifying in this action that John I. Wells or Pat Downs in pointing out timber claims to these entrymen and entrywomen themselves were acting for anybody except themselves as locators, and the entrymen and the entrywomen were exercising their right under the law?

A. No.

Q. If they were acting for anybody else you did not know it?

A. No, sir.

Q. And you don't know it now?

A. No, sir.

Q. And you don't mean to so testify?

A. No.

Q. Now, when it comes to selling the claims, which were ultimately sold, those that you were interested in, you did not mean to testify that Mr. Downs or Mr. Wells or either of them had anything to do with who that property should be sold to, did you, except to direct you where you could sell it?

A. Why, no, I don't see how I could feel that way

(Testimony of William H. Humphrey.)
that they did.

Q. So far as you know?

A. No, I do not know.

Q. Anything that would lead you to think that Mr. Downs or Mr. Wells, were acting for anybody, or had any part in the sale of those timber claims to L. M. Pritchard, did you?

A. No, I did not know that they did.

Q. And do you mean to be understood as testifying that any company, whether you know who it was or not were buying only such claims as Mr. Wells and Mr. Downs located?

A. Oh, no, I did not mean to be understood that way at all, that they were buying just what they located.

Q. Well, then the substance of your evidence is, Mr. Humphrey about this matter as you understood it, Wells and Downs were partners and carrying on a locating business, locating people at so much per claim?

A. Yes, sir.

Q. And so far as you have any knowledge that was the beginning and ending of their connection with this lumber deal, is that right?

A. Yes, sir.

Q. And then you in addition learned from them, or one of them, that there would be or was an assured market for these timber claims at a certain price for anybody that wanted to sell, is that right?

A. That is the way I understood it.

Q. But so far as you know in your own claim, and so far as you know in reference to Mr. Allen's and

(Testimony of William H. Humphrey.)

Mr. Thompson's claim, there was no agreement—no kind of agreement, express or implied, which obligated you or them to sell for that price, or to sell to that party, or any particular party? A. No.

Q. The fact that they did sell to them was, so far as you know, because there was no one else paid any more money?

A. That is right, as I understand it.

Mr. BUNDY.—That is all.

Redirect Examination.

(By Mr. GORDON.)

Q. When you were sent to see Mr. Pritchard about Allen and Thompson's claims, did he know what you came there for before you announced the object of your visit?

A. When I went there with Mr. Allen and Mr. Thompson?

Q. Yes, sir.

A. Why, we told him what we had come for to settle for that claim that they had taken and sold—we were sent to him to finish up the business.

Q. Well, whom did you sell it to?

A. I don't know.

Q. Well, did you understand that the claim was sold before they entered the claim? A. No, sir.

Q. When did you afterwards learn that this was sold?

A. Well, just right away after they had proven up on it.

Q. That was the same day you made your final proof?

(Testimony of William H. Humphrey.)

A. Yes, sir; the same day that they made their final proof.

Q. And you went directly from the land office to Mr. Pritchard's office, is that correct?

A. Yes, sir.

Q. And what did you say to Mr. Pritchard when you went in that day?

A. Well, I introduced this man Allen to Mr. Pritchard as the man who had a certain claim that he was to buy.

Mr. BUNDY.—Buy or sell?

The WITNESS.—That he was to buy.

Q. What did Mr. Pritchard say?

A. I cannot say what he said. We sat down there and he fixed up the papers, wound the deal up and paid over the money.

Q. How long were you there?

A. Oh, not a great while—not very long, only a short time.

Q. Then you say you do not know who Mr. Wells and Mr. Downs were representing, is that right, or that they were representing anybody?

A. I cannot swear that they were, no.

Q. But you know that the three claims, yours, Allen's and Thompson's which they, one or both had given assurance that if those claims were taken up that they knew someone would purchase them?

A. Yes, sir.

Q. Were purchased by Mr. Pritchard?

A. Yes, sir.

Q. And you had never seen Mr. Pritchard with

(Testimony of William H. Humphrey.)

reference to the purchase of any of those claims until you went there with them, Allen and Thompson?

A. I had not had any talk with Mr. Pritchard, before, no.

Q. And when you were asked by Mr. Bundy what tangible evidence you had that Mr. Downs and Mr. Wells were doing business for anyone other than themselves, was not the fact that Mr. Pritchard was buying the claims that they had made certain representations in reference to, was not that sufficient evidence to convince you they were acting for Mr. Pritchard or someone else?

A. Why, I was kind of convinced that way from those deals, naturally would, but I had no absolute proof—you understand what I mean.

Mr. BUNDY.—Well, that is all you know about it?

The WITNESS.—Yes.

Mr. BUNDY.—They bought three claims that you knew about?

The WITNESS.—Yes, sir.

Mr. BUNDY.—Which they assured you there would be a market for?

The WITNESS.—Yes, sir.

Mr. GORDON.—That is all.

Recross-examination.

(By Mr. BUNDY.)

Q. Mr. Humphrey, you knew, and everybody knew at that time that Mr. Pritchard was buying claims for \$650?

A. Yes, that was the general supposition.

Q. And anybody who had a claim to sell knew

(Testimony of William H. Humphrey.)

where he could get \$650 for it?

A. I think so, if they had a right to sell it and a desirable claim.

Q. Was Mr. Kinkaid present when Mr. Allen was in Mr. Pritchard's office? A. No, sir.

Q. Mr. Kinkaid was not present at all in the office at that time? A. No, sir.

Q. At either time when Mr. Allen or Mr. Thompson was there? A. No, sir.

Q. He was not in Pritchard's office at all?

A. No, sir.

Q. Did you ever see Mr. Kinkaid and Mr. Allen together?

A. No, sir; I never knew Mr. Kinkaid for some time after that.

Mr. GORDON.—That is all.

[Testimony of Henry Humphrey, on Behalf of the Complainant.]

HENRY HUMPHREY, a witness called on the part of the complainant herein, United States of America, and after being first duly sworn by the Examiner to tell the truth, and whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Henry Humphrey?

A. Yes, sir.

Q. Where do you reside, Mr. Humphrey?

A. At Medford, Oregon.

Q. Where did you reside in April, 1902?

(Testimony of Henry Humphrey.)

A. In Boise, Idaho.

Q. What was your occupation?

A. Well, at that time I was building a house and getting ready for my family—I bought some property there and I was building. I hadn't gone into any business yet.

Q. You took up a timber claim in April, 1902?

A. I took up a claim that spring, but I could not say whether it was in April or not, but it was about that time.

Q. I show you timber and stone land sworn statement of Henry Humphrey, dated April 29, 1902, and ask you if you signed that paper and filed the same in the land office at Boise, Idaho, on or about that date?

A. Yes, sir.

Q. I show you non-mineral affidavit of Henry Humphrey, of the same date, and ask you if you signed that paper and filed it in the land office at that time?

A. That is my signature, yes, sir.

Q. I show you the testimony of Henry Humphrey given on final proof, July 17, 1902, and ask you if you signed that paper?

A. I did.

Q. Also the cross-examination attached thereto, signed "Henry Humphrey," did you sign that?

A. I signed it, yes, sir.

Q. I show you a deed dated November 12, 1903, signed by Henry Humphrey and Elizabeth Humphrey, made to A. E. Palmer, and ask you if that is your signature?

A. Yes, sir.

Q. And your wife's?

A. Yes, sir.

Q. You signed that deed?

A. Yes, sir.

(Testimony of Henry Humphrey.)

Q. Mr. Humphrey, at the time you made a filing on the timber claim that you entered, did you know of a market for timber claims?

A. Simply by hearsay, all I heard.

Q. Well, who did you hear was buying timber claims?

A. John I. Wells for one, and I think there were some others.

Mr. BUNDY.—Now, I object to hearsay evidence, what he heard.

A. I was not acquainted with John I. Wells at that time, not until I returned from my trip with the locator, Mr. Downs; he went with me to locate me and I had not seen Mr. Wells at that time, that is, to know him.

Q. Who sent you to see Mr. Downs?

A. Well, I could not tell you who did.

Q. Did your son?

A. Why, I presume we talked about it; I know it was generally known that he was a locator. And a good many others talked with me about it.

Q. Did you locate after your son did?

A. No, I think before—I think so, but I might be mistaken—but I am pretty sure I located before.

Q. And did you have a talk with Mr. Downs about locating you? A. Oh, yes, sir.

Q. Before you went up there, or after you got up where the claim was?

A. Oh, I had seen him before, but we talked on the way up; he went up with us.

Q. Did he say anything about being able to sell

(Testimony of Henry Humphrey.)

your claim?

A. Well, it was talked in the crowd, I don't know what Mr. Downs did say about it; I presume he mentioned it—I presume it was talked of in the company.

Q. And he located you on a certain timber claim?

A. Yes, sir.

Q. Did he give you the numbers and description of the claim?

A. Yes, sir; all around it, clear around it.

Q. And what did he tell you to do with those numbers?

A. I think he told me to make a minute of it in order to make my filing—yes, sir, because Mr. Downs didn't go back with us.

Q. When did you meet Mr. Wells?

A. Right after we came back; I offered to pay Mr. Downs a fee for locating up at Centerville, and he told me not to pay him there, but to go into Mr. Wells' office in the Pack Block and pay him, that it was all the same, to pay Mr. Wells the location fee.

Q. Now, who prepared your filing papers for you?

A. Well, I can't say, but I think it was done at Mr. Wells' office—I think so, yes, Mr. Downs was to do that.

Q. Did you know a Mr. Hays, Mr. J. A. Hays?

A. No, I don't remember any such name. I know S. H. Hays, not J. A. Hays. I may have known such a man, but I do not recall his name now.

Q. Your best recollection is that your filing papers were prepared in Mr. John I. Wells' office?

(Testimony of Henry Humphrey.)

A. Yes, sir; I think so. I think he had something to do with it from the remark that was made at the land office when I presented my papers they asked me why I didn't get someone that could write or do something; they found some little fault with them and that is what makes me think so.

Q. Did you go direct from the land office to Mr. Wells' office—or I mean direct from Mr. Wells' office to the land office?

A. I think so. Now, I won't be positive about that, but it is my impression we went there the same day.

Q. Then you paid a certain amount in the land office that day?

A. Yes, sir.

Q. And do you remember the occasion on which you made your final proof?

A. Oh, yes, sir.

Q. Do you know how much you paid in the land office then?

A. Yes, sir.

Q. How much?

A. \$412. I am quite sure that is the exact amount.

Q. And that was your own money?

A. It was. I tendered a check for the amount and the receiver told me he could not take checks, that I would have to get the money, and sent me out to get the money at the First National Bank.

Q. You had an account there, did you?

A. Yes, sir.

Q. Now, at the time you made this payment of \$412 to the land office, did you have any person in view then to whom you could sell it?

(Testimony of Henry Humphrey.)

A. No, sir, not really—I had been given to understand that I could sell it, that it was salable, but I declined to make any arrangement with anybody. I had been given to understand it was salable and that I could sell it at any time I wanted to.

Q. When were you given to understand that?

A. Oh, I could not tell you. I knew they were selling and that they were salable before I went up there to file on it or to locate on it.

Q. Did Mr. Downs or Mr. Wells tell you that?

A. I think so. I think they told me that it could be sold.

Q. Did they tell you they could sell it?

A. I think so. Now, I won't be positive about that.

Q. Now, Mr. Humphrey, be careful; I don't want you to say anything because I put the question that way that you don't remember. Now what is your best recollection about that?

A. I don't believe that Mr. Wells offered to buy it, but I was given to understand that I could sell it. I don't think Mr. Wells offered to buy it of me before I proved up.

Q. Did Mr. Downs?

A. I think Mr. Downs might have told me I could sell it, I think he did.

Q. Well, did he tell you that before you went up to locate, or to look at the land?

A. Oh, no; Mr. Downs did not, because I did not know him then, or just shortly before that.

Q. Did he tell you that on the way up?

(Testimony of Henry Humphrey.)

A. Well, it was talked in the company—I don't know whether Mr. Downs had anything to say about it or not.

Q. Were you all in one wagon?

A. Why, some were in the wagon and on saddle horses—there was quite a crowd of us; Mr. Downs went with us.

Q. Did you ride in the wagon with Mr. Downs?

A. A part of the time I did; we changed around.

Q. And the day you paid the \$412 in the land office they gave you a receipt for it, didn't they, what they call a cash certificate?

A. Yes, sir.

Q. And what did you do with that the day you received it?

A. I kept the receipt.

Q. Well, how long after that did you start negotiations looking to the sale of this property?

A. Well, I can't tell exactly, it was quite a while. I had talked of selling it, but I supposed I had no right to sell it until I got my patent and I think I told some parties so, and I thought so until I went to a special agent, I don't recollect his name now, but there was a special Government agent there and I asked him if I had any right to sell that land before I got the patent, and he replied that he did not see any reason why I could not sell it before I got my patent, sell it on this receipt without waiting for the patent.

Q. And do you remember to whom you did sell?

A. Well, the name in the deed is familiar to me now, A. E. Palmer.

Q. A. E. Palmer?

(Testimony of Henry Humphrey.)

A. Yes, sir, I am quite certain that name was the one I sold it to when I did sell it.

Q. You think that name was in there?

A. Yes, sir; I am quite certain that that name was inserted when I sold—I recollect the name A. E. Palmer.

Q. Now, who conducted the transaction for Mr. Palmer?

A. I think an attorney by the name of Pritchard conducted the business for Mr. Palmer and took the acknowledgment also, I think so.

Q. Yes, that is right. Now, why did you go to see Mr. Pritchard?

A. I think Mr. Wells told me to.

Q. When did Mr. Wells tell you to go and see Mr. Pritchard?

A. I could not tell, but it was sometime before I sold, I don't remember whether it was directly before, or when I got ready to sell it.

Q. How much did Mr. Pritchard give you for it?

A. I think \$750, if I am not mistaken.

Q. The consideration of that deed, as named in the deed, is \$650.

A. Is it?

Q. Yes.

A. Well, then that is the amount I got, I thought it was \$750.

Q. Did Mr. Wells take you up to Mr. Pritchard's office?

A. No, sir.

Q. You went alone?

A. I went alone, Mr. Wells was not with me.

Q. Did your wife go with you?

(Testimony of Henry Humphrey.)

A. No, sir; I took her in afterwards to sign and acknowledge the deed, I don't think she was in when I signed the deed myself; I think I took her in afterwards.

Q. Now, how many times did you go to Mr. Pritchard's office to execute the deed?

A. Why, perhaps twice.

Q. Did you ever make more than one deed?

A. No, sir.

Q. Did he pay you in money for your land the day you made the deed?

A. Yes, sir; in his office he paid me in currency, I am pretty positive.

Q. I notice the date of this deed has been changed. Do you know anything about that?

A. No, sir.

Q. Have you any idea what month you signed that deed?

A. Well, I have not, but it was quite a while after I proved up on it, though. I have no minute of it, I couldn't tell you now; I have talked with him some about selling it before I sold it,—I declined to sell it until after I had seen this special agent, I thought I would have to wait.

Q. Had they been trying to purchase it before that time?

A. Yes, they had spoken about it.

Q. When was the first time you were spoken to by any of these people you refer to, Wells or Pritchard, with reference to the date you made your final proof?

(Testimony of Henry Humphrey.)

A. Why, not very long after I had proven up we had a talk about it. I think it was not very long afterwards, because they wanted to buy it and I declined to sell then on account of not having my patent, and Mr. Wells suggested that that didn't make any difference, but I would not take his word for it until I saw the special agent and asked him about it.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement of Henry Humphrey, dated April 29, 1902, also non-mineral affidavit of Henry Humphrey of the same date; the testimony of Henry Humphrey given on final proof July 17, 1902, and the cross-examination attached thereto.

The WITNESS.—When did I prove up?

Mr. BUNDY.—July 17, you proved up.

The WITNESS.—Well, I have forgotten when I did prove up.

Mr. GORDON. All of which papers have been identified by the witness Henry Humphrey, as having been signed by him, and filed in the land office at Boise, Idaho. Also the notice of publication dated April 29, 1902; the testimony of the other witnesses given on final proof, the receiver's receipt and the register's certificate, dated July 17, 1902. The deed dated November 12, 1902, made by Henry Humphrey and Elizabeth Humphrey, husband and wife, to A. E. Palmer, consideration \$650, which has been identified by Henry Humphrey as having been signed, executed and acknowledged by himself and Elizabeth, his wife, before L. M. Pritchard, Notary Public. Also a certified copy of patent dated December 29, 1904, all to

(Testimony of Henry Humphrey.)

the east half of the northwest quarter, section 28, and the east half of the southwest quarter, section 21, in township 7, north of range 5 east of the Boise Meridian.

All of said papers are here offered in evidence and are marked Complainant's Exhibit Henry Humphrey No. 1.

Mr. GORDON.—That is all. You may cross-examine.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Humphrey, up to the time you filed your first papers in the land office, had you entered into any kind of an agreement, written or oral, express or implied, with any person, firm or corporation by which you had agreed to turn over this property to them, or to such person as they should direct?

A. No, sir.

Q. Did you enter into any such agreement, or similar agreement, before making final proof?

A. No, sir.

Q. Did you make any agreement with reference to a sale of the property until after final proof?

A. No, sir.

Q. Did anybody, Mr. Wells, Mr. Downs, or any other person try to buy your property prior to final proof?

A. They didn't try to buy it, but they told me that they would buy it if I wanted to sell it.

Q. And did they do so after making your filing and even your final proof?

(Testimony of Henry Humphrey.)

A. Yes, sir, that was talked before final proof, that this was salable.

Q. That there was a market for it?

A. Yes, sir; and I guess they named a price that they were paying.

Q. Well, did you understand they were buying, or that there was someone else there that was buying?

A. Well, I did not know whether they were acting as agents or attorneys.

Q. Well, you never knew of John I. Wells buying a timber claim? A. No, sir.

Q. Or Pat Downs?

A. No, sir; I don't think they ever had money enough to buy one.

Q. Well, you never knew of them buying one for anyone else?

A. No, I don't know as I ever did.

Q. Well, you never did? A. No.

Q. All they told you was there were some people there that were buying, and there would be a market for them at that price, when they wanted to sell—at a certain price? A. Yes, sir.

Q. They didn't say they were buying claims for anybody? A. Why, not for themselves.

Q. Well, they did not claim they were buying for anybody else?

A. I can't say about that. I know they were offering to buy timber claims.

Q. Well, did they?

A. Well, I won't say positive about that.

Q. Well, now, you have got that into your head

(Testimony of Henry Humphrey.)

and I want you to tell that right in here, who told you that and when?

A. Why, there was a great many told me that.

Q. Who,—Wells and Downs tell you?

A. Why, I don't know that Wells or Downs either one of them ever told me that they would buy them themselves.

Q. Did Mr. Wells or Mr. Downs ever tell you they would buy them for someone else? A. No.

Q. They never told you that in their life—you never heard of them buying any—you never heard that they were buying claims for anybody else?

A. Well, somebody was buying.

Q. Who, Pritchard?

A. I know they were buying.

Q. Who? A. Somebody was buying them.

Q. Well, you don't know who though?

A. No, sir.

Q. But from your testimony here, you lead one to think that Mr. Wells and Mr. Downs were buying these claims for someone else. Now, did they ever tell you that they were; if they did I want you to tell when and where.

A. Well, Mr. Pritchard acted for somebody else.

Q. Well, I am not speaking about Mr. Pritchard, I am talking about Mr. Wells and Mr. Downs?

A. Well, they never bought any claims from me, and they never paid me any money—Mr. Wells never did.

Q. Did Mr. Downs?

A. No, sir; he never did, but he told me to go to

(Testimony of Henry Humphrey.)

Mr. Pritchard if I wanted to sell and get my money and close the thing up. But Mr. Wells or Mr. Downs never offered to pay me any money.

Q. Did they tell you that Mr. Pritchard was buying claims, that if you wanted to sell to go up there?

A. Yes, sir; go there and get my money for it, if I wanted to sell.

Q. And told you what price he was paying?

A. Yes, sir, I think they did.

Q. Now, is it not a fact that all Mr. Wells or Mr. Downs ever told you about buying claims was that if you wanted to sell, to go to Mr. Pritchard, that he was buying them for \$650?

A. Yes, sir; and they wanted to buy it sooner, but I would not sell it.

Q. Now, Mr. Humphrey, the Government of the United States in this lawsuit we are trying has charged in its bill of complaint that you made that timber and stone entry at the request of and for the benefit of John I. Wells, Patrick Downs, the Barber Lumber Company and the other defendants. Now, I want to know whether that is true or false?

A. I did not do anything of the kind, and I never heard of the Barber Lumber Company before.

Q. Well, did you enter that claim at the request of or for the benefit of anybody but yourself?

A. No, sir.

Q. Did you do it at the request of or for the benefit of John I. Wells, Patrick Downs, L. M. Pritchard, John Kinkaid, A. E. Palmer or anybody else?

(Testimony of Henry Humphrey.)

A. No, sir, I did it for my own benefit and nobody else's.

Q. The Government also charges in this case that you entered into an agreement with the defendants I have named and the other defendants, by which you were to go to the land office and make an entry for them at their request, and then go to the land office and testify to what you knew to be false, for the purpose of defrauding the United States, is that true or false? A. That is false.

Q. Did you enter into an agreement with anybody to defraud the United States?

A. No, sir; I did not.

Q. Did you enter this land at the request of anybody?

A. No, sir; I requested them to locate me, and I asked them their price and I paid it.

Q. Did you enter it for the benefit of anybody then? A. For myself; no one else.

Mr. BUNDY.—That is all.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Humphrey, you said something about people going to the bank and being paid for the land, what did you mean by that?

A. Well, my wife for one, she sold her claim to the Payette Lumber Company, and the deed was deposited in the Capital City Bank, and she went to the bank and got her money when it came.

Q. Was that after you sold your claim?

A. Yes, sir; long after.

(Testimony of Henry Humphrey.)

Mr. GORDON.—That is all.

Recross-examination.

(By Mr. BUNDY.)

Q. The only market you knew anything about at the time you filed was statements rumored about on the street that that was valuable timber and there would be a market for it sometime?

A. Yes, sir.

Q. But you did not know by whom or when?

A. No, there were several buying timber claims.

Mr. BUNDY.—That is all.

[Testimony of Junius Wright, on Behalf of the Complainant.]

JUNIUS WRIGHT, a witness called on the part of the complainant herein, United States of America, and after being first duly sworn by the Examiner to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Wright, where do you reside?

A. 102 East 11th Street, Portland, Oregon.

Q. What is your occupation at the present time?

A. I am in the grocery business.

Q. Did you ever reside at Boise, Idaho?

A. Yes, sir; about ten years.

Q. When did you go to Boise? A. In 1898.

Q. In 1898? A. Yes, sir.

Q. And how long did you remain there?

A. Until April, 1908.

(Testimony of Junius Wright.)

Q. And what was your business while you were at Boise, Idaho?

A. I was in the grocery business there.

Q. Did you know Mr. John I. Wells, of Boise?

A. I did.

Q. Did you know Mr. Frank Martin, at one time Attorney General for the State of Idaho?

A. Yes, sir.

Q. Did you know Governor Steunenberg in his lifetime? A. I did.

Q. I will ask you whether or not you ever had any conversation with either Mr. John I. Wells, or Frank Steunenberg, concerning the timber transactions in the State of Idaho? A. I did.

Q. Will you state what that was and with whom it was and with which one it was?

Mr. BUNDY.—I object to that as incompetent, irrelevant, immaterial and hearsay evidence.

Q. You may proceed.

A. I had, quite an extended conversation with John I. Wells one day regarding their lumber transactions in Idaho.

Q. When was that?

A. That was during the early part of 1905, presumably in January.

Q. Well now, state the occasion.

A. Just how, Mr. Gordon?

Q. Well, state how you came to have this conversation with Mr. Wells and what he said.

A. Mr. Wells owed me considerable money and I was dunning him pretty hard for it.

(Testimony of Junius Wright.)

Q. How much did he owe you?

A. He owed me altogether about \$450.

Q. And what did he owe that for?

A. For supplies, for groceries for himself and his family.

Q. Now continue.

A. He had deferred payment for some months, saying that he was out of funds, but had some coming, and he asked me if I would wait on him if he would give Governor Steunenberg for security. I told him certainly, that I had known Governor Steunenberg for twenty-five years and was intimately acquainted with him. So one day he took me to the Idanha Hotel where I met Governor Steunenberg. The Governor took me to one side in the lobby—

Mr. BUNDY.—I object to any conversation with Governor Steunenberg as incompetent, irrelevant, immaterial and hearsay.

Q. Proceed.

A. —and asked me if Mr. Wells owed me any money. I told him at that time he owed me perhaps \$100. He told me that Mr. Wells would have plenty of money in a short time and that he would see that the account was paid or would pay it himself, and to let Mr. Wells have anything he wanted.

Mr. BUNDY.—What is that?

The WITNESS.—To let Mr. Wells have anything he wanted.

Q. Very well, proceed.

A. So, on this promise from the Governor, I told Mr. Wells that he could get anything he wanted from

(Testimony of Junius Wright.)

the store and he began to buy quite heavily—his account running some \$50 or \$60 a month. But in the course of a few months as the account grew much larger I told Mr. Wells that I must have some money, and he made promises to get it for me, but his promises did not materialize. One day Mr. Wells remarked to me that he had some money coming, but people who owed him did not seem to be treating him right, and he said he was going to get it, or he would—well, he made some threat, I don't know what it was, perhaps he said he would raise hell, something like that.

Q. Now, did he tell you who these people were that owed him the money? A. Not at this time.

Q. Did he tell you what it was for?

Mr. BUNDY.—I object to these leading questions. Why don't you ask him what the conversation was?

Q. You may proceed.

A. Finally I asked him one day why he gave Governor Steunenberg for security, why Governor Steunenberg seemed so willing to stand security for his debt and what he was sore about.

Q. This was Mr. Wells you were talking to?

A. This was Mr. Wells I was talking to.

Q. Proceed.

A. And knowing he was in the timber business I intimated it was in regard to timber claims and I said to him, "John, I want to know what this trouble is and all about it, and you will have to tell me, because if I have to force Governor Steunenberg to settlement I will have to know what this trouble is."

(Testimony of Junius Wright.)

Anyway we went out in front of my store on the sidewalk and sat down and he told me.

Q. What did he tell you?

A. He told me that when John Kinkaid was a member of the legislature he conceived the plan of locating people on timber claims in the Boise Basin. The plan was to have some cruisers locate people for which these locators would be—that the plan was to have these people located on claims for which when they proved up on them they would receive \$400. In some way or other, he became interested with Kinkaid, and in pursuance of this business, they finally used up all the available funds each of them had.

Mr. BUNDY.—You are telling now what Mr. Wells told you?

The WITNESS.—Yes, sir; this was Mr. Wells' story to me.

Q. Proceed.

A. Wells said about this time Governor Steunenberg came to them and wanted to get in on the deal, on the ground floor, and they told him they were willing to take him in, and in order for him to come in, he would have to put up enough money to equal the money that had spent, it costing Governor Steunenberg about \$11,000, which the Governor gave them to get in.

Q. Did he tell you anything else?

A. Yes, I was trying to think what was the next point he told me. He said their plan of making money out of it was to turn these over to some big concern—some big lumber company at a profit, and

(Testimony of Junius Wright.)

that the three of them were to share equally in the profits. He said that his part of the profits was about \$13,000, but that in handling the money for these people, he had lost about \$9,000 and they were trying to hold that out on him from his share. I asked him how he had lost it and he replied to me, he said, "You know I am no bookkeeper, I can hardly write my own name." He says, "I have kept no books," and he says, "I don't know where in hell this is gone, except I paid out something like \$4,000 to these locators who have got cold feet and have skipped the country before they proved up on their claims." I asked him how he got his money, whether by check, or in what manner he had got it, and he said no, he never got a check, but that whenever he wanted any money he went to the First National Bank and if the officials of the bank did not turn over any money to him, he communicated with Governor Steunenberg, and of course, in a few days he had got it. I asked him how much money he had handled altogether and he told me, "I think about \$248,000." He told me that the people who were supplying the money was the Barber Lumber Company. He also told me in whose name these deeds were placed on record, after final proof was made, but I have forgotten who it was. A man by the name of Sweet was one of the principals in this deal.

Q. Did he tell you anything about what arrangement they had with the entrymen?

Mr. BUNDY.—That is objected to as suggestive and leading, and I ask that the witness be required to

(Testimony of Junius Wright.)

give the conversation in full, without being led by counsel.

Q. Proceed.

A. I have already stated that Mr. Wells said that to each entryman, or locator, he was to pay \$400 upon final proof, and that they also advanced some money for current expenses.

Q. What do you mean by locators?

A. Well, I presume what you call entrymen. For instance, John Jones would go out and locate his claim in the Boise Basin, and secure title to it and then sell it to them.

Q. Well, did you mean to use the word "Locator" as a man who makes a business of locating people?

A. No.

Q. Or do you use it as entrymen?

A. As entrymen, the people who take up the claims.

Q. You used the word locator as indicating the person who goes and takes up the claim?

A. Yes, sir, the person who takes up the claim and sell it or does what he has a mind to do with it.

Q. Did you ever see Governor Steunenberg in reference to this matter after the conversation you have detailed here—did you have a conversation with him?

A. Oh, yes, I had quite an extended conversation with the Governor shortly afterwards—a month or so after this.

Q. Now, proceed and tell all that led up to this.

Mr. BUNDY.—To that we object as incompetent,

(Testimony of Junius Wright.)

irrelevant, immaterial and hearsay evidence.

Q. You may proceed.

A. Possibly a week or two after this conversation—

Q. With Mr. Wells?

A. With Mr. Wells—knowing Mr. A. K. Steunenberg well—

Q. Who was Mr. A. K. Steunenberg?

A. He was a brother of Frank—a brother of the Governor.

Q. All right, proceed.

A. I asked him for an interview at his home at Caldwell, Idaho.

Mr. BUNDY.—Asked who, the Governor?

The WITNESS.—No, A. K. Steunenberg.

Q. Proceed.

A. And we made an arrangement for the following Sunday. We met at his home—

Q. Whose home?

A. A. K. Steunenberg, and I told him that—

Mr. BUNDY.—I object to any conversation with A. K. Steunenberg as incompetent, irrelevant and immaterial and hearsay.

Q. Very well, go on.

A. And I told him that Frank Steunenberg had agreed to pay the debt of a certain party and I knew that this debt was to be paid, because of his connection with this timber deal that was being talked of so much. And he replied to me that he did not want me to tell him anything about the timber deals, if I could avoid it in our conversation. So I simply asked him

(Testimony of Junius Wright.)

if he thought Frank would pay me this money inasmuch as he had agreed to, and that if he would not suggest to Frank that this money had better be paid to me, inasmuch as I had knowledge of his relations to Wells and Kinkaid.

Q. Do you know where Governor Frank Steunberg was at that time, and why you did not go to see him instead of his brother?

A. He was in Wisconsin at that time.

Q. Proceed now.

A. In a week or two Governor Steunenberg returned home and called me up by telephone and said he would be up on the first of the month to settle that bill.

Q. What bill?

A. The bill of Mr. Wells. Well, he did not arrive on the first, but a few days afterwards, upon returning to my store from supper one of my clerks told me that Governor Steunenberg had been in the store and had left a request that I come down to the Idanha Hotel.

Q. Now, do you remember what month this was?

A. Not positively, but I think it was the first week in April, 1905.

Q. Do you remember the day of the week?

A. It was on Saturday, I know it from this fact, that we closed the store at 6:30, but I had returned, of course, from my supper.

Mr. BUNDY.—What year?

The WITNESS.—1905.

Q. Go ahead.

(Testimony of Junius Wright.)

A. So I left the store about 7:30 in the evening to go up to the hotel. I went up to the hotel and I met the Governor in the lobby and we took the elevator to his room which was on the 6th floor.

Q. With Governor Steunenberg?

A. Yes, sir. We went into his room together and both sat with our feet up in the window and had a social chat for a while and then he very abruptly asked if Mr. Wells had told me anything about the timber deals in Idaho.

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial and hearsay, and further because Governor Steunenberg is now dead.

Q. Proceed.

A. I replied to the Governor that Mr. Wells had told me the whole story from its conception to the present time. He then asked me if I thought he was morally bound to pay this account without any legal aspect of the case. I told him I certainly thought he was. After a few moments he said, "I will pay you Monday morning."

Q. Did he ask you how much the bill was?

A. He did not.

Q. Proceed.

A. Early Monday morning Mr. Wells came into my store and told me Governor Steunenberg would not pay me that morning.

Mr. BUNDY.—Wells said so?

A. Yes, sir. But he would pay me the following morning, that this money had not reached Boise yet

(Testimony of Junius Wright.)

—or that his money had not reached Boise yet. About thirty minutes after this, Mr. Steunenberg came into the store and said he did not have the money but would have it on Tuesday morning. Tuesday morning, Governor Steunenberg came into the store and asked me for a receipt for Mr. Wells' account which I gave him. He took it and went out of the store with it.

Q. Did he pay you? A. No, sir.

Q. Proceed.

A. In a few minutes he came back and said to me, "If I pay this account at this time, what have I to show that you will not hold me for any further accounts of Wells which might accrue in the future?" Then I told him if he would accept anything in writing, I would give it to him. So I then added to the bottom of this receipt I had already given him, a statement that I would hold Frank Steunenberg harmless against any account of John I. Wells which might accrue in the future. We then went to Frank Martin's office.

Q. I will ask you if you went at your own suggestion or at the suggestion of Governor Steunenberg?

A. No, he asked me to go up the street with him, and I did not know what he was up to, and to my surprise we went to Frank Martin's office.

Q. Frank Martin was the ex-attorney general of Idaho? A. Yes, sir.

Q. Proceed.

A. After we got up there in Frank Martin's

(Testimony of Junius Wright.)

office, he went to a safe in one corner of the office and did something, I did not notice what.

Mr. BUNDY.—Who, Martin or Steunenberg?

A. No, Governor Steunenberg. Then he handed this receipt to Mr. Martin and asked him, he Martin, his opinion about it. Mr. Martin said he thought that receipt would cover everything, and then Mr. Steunenberg called me into an inner room, where I found Mr. Wells seated at a table?

Q. That is, John I. Wells? A. Yes.

Q. Then what?

A. Governor Steunenberg then very promptly handed me a roll of bills and asked me to count them. I counted this roll of bills and found \$450, according to the best of my recollection. He then asked me if that was enough, and I said yes, and I put it in my pocket and walked out. In about twenty minutes after that, Mr. Wells came to me and asked me if I had more money than was coming to me, and I told him yes, I had \$1.50 too much, and he asked me for it and I gave it to him.

Q. You had \$1.50 too much? A. Yes, sir.

Q. You mean to say that Governor Steunenberg had overpaid you?

A. Yes, sir. I think the account was \$448.50, and he gave me even money, \$450.

Q. Anything else?

A. No, that closed the account, so far as Wells and I were concerned. I don't remember that Governor Steunenberg and I ever had any further conversation after that time.

(Testimony of Junius Wright.)

Q. Did Mr. Wells tell you how long he had been working on this timber deal?

Mr. BUNDY.—That is objected to as leading, incompetent, irrelevant, and immaterial. The witness is supposed to give the whole conversation without any suggestion from counsel.

Q. Answer the question.

A. I think he did.

Q. What did he tell you?

A. He told me that John Kinkaid had conceived this idea when he was a member of the legislature from Boise County, and a few months afterwards he associated himself with Kinkaid.

Q. Well, was he still working on the transaction himself, or how long had he ceased?

Mr. BUNDY.—That is objected to as not calling for any conversation, but is asking the witness to testify to a conclusion.

Q. I am asking you what he told you.

A. He told me their business was practically at an end, that they had secured all the claims that they wanted.

Q. Anything else?

A. Not that I remember.

Mr. GORDON.—That is all.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Wright, were you in business in Boise alone, or in connection with anyone else?

A. I was alone.

Q. You were alone?

(Testimony of Junius Wright.)

A. Well, both ways.

Q. Well, at the time you have been telling us about, in 1905, and on?

A. Why, I had one store that I owned alone, and I had another store in which there were three of us interested.

Q. Well, the store in which John I. Wells owed the account? A. That was mine alone.

Q. And you ran it in your name, Junius Wright?

A. They were all run in my name.

Q. Didn't have a firm name?

A. No, sir, all the stores were run in my name—I had four altogether.

Q. Well, did you ever have any firm name or trade name that you used?

A. I did not, sir. Well, I called all of the stores different names, but my name was on the stationery as proprietor.

Q. What did you call the particular store in which Wells ran his account—the name of it?

A. The American Grocery.

Q. And did you say that was owned by yourself alone?

A. Yes, sir, that was owned by myself alone.

Q. How long was that store run—when did you start it? A. In 1901.

Q. And you ran it until you failed?

A. Until 1908.

Q. You finally failed and went through bankruptcy, something like that?

A. No, sir, neither one or the other.

(Testimony of Junius Wright.)

Q. What did you do?

A. I sold it to protect my wholesale creditors, and to make a settlement with the Capital City Bank.

Q. Did you pay your creditors? A. I did.

Q. One hundred cents on the dollar?

A. Yes, sir.

Q. And interest?

A. There was no interest; the parties that bought it from me assumed the indebtedness and paid it up in cash.

Q. When did Mr. Wells begin running this account with you that you have spoken of?

A. Either in the fall of 1903, or in the spring of 1904.

Q. And he had been paying part of his bills along? A. Yes, sir.

Q. But not all, so they accumulated, is that it?

A. Yes, sir, for some three or four months he paid me very promptly, then there would be a balance of \$5 or \$10 each month until it got up to be \$40 or \$50, and then I began to inquire who John I. Wells was, whether he had any credit, etc., and after making inquiries I found out that his reputation was none of the best, and he had not improved on it in recent years, so I began to press him pretty hard for settlement.

Q. Well then, up to January, 1905, the bill had gotten sufficiently large so that you became somewhat apprehensive? A. Yes, sir.

Q. Then it was that you began to make inquiries?

A. No, before that.

(Testimony of Junius Wright.)

Q. You have not told us anything before 1905, that you had a talk with Wells,—you had a talk with other people before that?

A. I talked with several people concerning Wells' standing—a number of people concerning his standing where he formerly resided.

Q. I am addressing your attention to the first talk you say you had with Mr. Wells during the early part of 1905, which you say you think was in January,—the time when you say the bill had gotten up to \$100, I believe.

A. No, I don't think I said that—

Mr. GORDON.—That was with Steunenberg.

Q. No, you told us you had a talk with Mr. Wells in 1905, in January.

A. I don't think I told you that.

Mr. GORDON.—Well, tell him what you did say.

Q. When did you have a talk with Mr. Wells about this matter first?

A. About the timber deal?

Q. No, about your claim?

A. About my claim?

Q. Yes.

A. Oh, I presume I became pretty severe on him in my conversation in the summer of 1904.

Q. But simply in the way of dunning him?

A. Simply in the way of dunning him.

Q. So the first time you had any talk with Governor Steunenberg was in January, 1905?

A. Well, about that time, might have been in December, or it might have been in January or it might

(Testimony of Junius Wright.)

have been in November that Governor Steunenberg guaranteed payment of this account.

Q. Well, that is the time you told us about, when you had a talk—that you testified about—when you had a talk in the fore part of 1905, and you thought it was in January? A. Yes, I think so.

Q. And at that time how much was Mr. Wells' bill?

A. I could not tell you without referring to my books, not exactly.

Q. Well, you did tell us in your direct examination, now tell us again.

A. Well, that bill of Mr. Wells, when Governor Steunenberg paid it was \$448.50.

Q. No, what was the amount of the bill when Governor Steunenberg said he would pay it?

A. Oh, that was only about \$100 then.

Q. That is just what I understood you to say before.

A. I know now what you mean.

Q. And you say after that he commenced buying rather heavily, \$50 or \$60 a month?

A. Yes, sir.

Q. So that it grew to be quite a considerable bill when Governor Steunenberg paid you?

A. Yes, sir.

Q. Do you recall when it was he paid you?

A. I think he paid me in April.

Q. In April, 1905?

A. Yes, in April, 1905.

Q. Have you got a copy of the receipt you gave

(Testimony of Junius Wright.)

Governor Steunenberg? A. No, sir.

Q. Did you make a copy of it?

A. I only made the one.

Q. And you gave that to him?

A. To Governor Steunenberg, yes, sir,

Q. Do you recall whether that receipt acknowledged payment from Governor Steunenberg, or from John I. Wells, or how did it read, do you remember now?

A. I am rather inclined to think that I worded it as coming from Governor Steunenberg.

Q. For account of John I. Wells?

A. Yes, sir, for account of John I. Wells.

Q. Was that a formal receipt you made on the regular blank?

A. No, it was on a piece of note paper.

Q. Letter paper you mean?

A. Yes, sir, letter paper.

Q. Did Governor Steunenberg write it and have you sign it? A. No, I wrote it myself.

Q. Where was that, do you remember?

A. That was at what I called the Union Grocery, next to the Idanha Hotel.

Q. Well, you told us about adding something to the receipt? A. Yes, sir.

Q. What was that?

A. That was to the effect that I would not hold Governor Steunenberg responsible for any further indebtedness that might result as an account against Mr. Wells.

Q. Was that written on the same receipt?

(Testimony of Junius Wright.)

A. That was written on the same receipt, underneath my signature, and the receipt was above.

Q. Did Governor Steunenberg write that?

A. No, I wrote that myself.

Q. Did you write it on the typewriter?

A. No, sir, I wrote it with pen and ink.

Q. Now, at the time you commenced dunning Mr. Wells along in the summer of 1904, did you know what his business was at that time? A. No.

Q. What did you understand it was?

A. Timber locator, timber investor—investor in timber lands.

Q. How long did you know that?

A. Oh, only for a short length of time.

Q. How long had you known of Mr. Wells being engaged in the business of locating timber claims?

A. Only a few months.

Q. And that was sometime in the summer of 1904, and spring?

A. Yes, sir, spring and summer of 1904.

Q. Otherwise, you did not know until he commenced trading with you, who he was?

A. No, I did not know him until he opened an account with us—I never had heard of him.

Q. And at the time he first opened up an account with you you did not know anything about him, or about his connection? A. I did not.

Q. You did not know whether he was working for anybody, or connected with anybody at that time?

A. No, I did not; I did not look him up at all,

(Testimony of Junius Wright.)

according to my recollection.

Q. Well, then, sometime during the summer you made inquiries of other people about Mr. Wells?

A. Yes, I made inquiries of people at Placerville, as to who Mr. Wells was, what he was and what his character was.

Q. Now who suggested your going to see Governor Steunenberg?

A. He did.

Q. Who?

A. Mr. Wells.

Q. During this dunning period?

A. Well, he asked me if I would accept Governor Steunenberg for his account.

Q. Now do you remember when that was?

A. Well, that must have been either in November or December.

Q. Of 1904?

A. It must have been as late as January, yes, sir.

Q. And you told him you would?

A. I told him I would, yes, sir.

Q. Then it was following that interview you went to see Governor Steunenberg?

A. Oh, yes. It was not a few days though until the Governor stated to me that he would be responsible for any indebtedness of Mr. Wells.

Q. And to give Mr. Wells whatever he wanted?

A. Yes, sir, to give Mr. Wells whatever he wanted.

Q. That you believe was about January, 1905?

A. Yes, sir, or a little previous to that—I think you can place it a little previous to that.

Q. Governor Steunenberg at that time was in

(Testimony of Junius Wright.)

what business?

A. Well, as a sheepman, principally.

Q. You did not know of any connection he had with any lumber company at that time?

A. Well, if I did it was only a matter of hearsay, public talk.

Q. Well, this was before you had that long talk with Mr. Wells in which he detailed this lumber deal?

A. Oh, yes, sir, this was perhaps two months before.

Q. Well, then, I think you said after this arrangement by which the Governor was to be responsible for Mr. Wells' claim, that Mr. Wells began to deal with you on a larger scale? A. Yes.

Q. And when did you next go to Mr. Wells in reference to this bill?

A. I don't think I said very much to Mr. Wells in the meantime; I felt very safe regarding the payment of his account until it assumed such a large proportion.

Q. Now, what was it at the time you did go to Mr. Wells again, approximately how large was the account? A. Oh, \$350, perhaps.

Q. And when was that, do you remember?

A. Oh, I could not tell you.

Q. Well, it was sometime in the spring of 1905?

A. Yes, must have been.

Q. And at the rate of \$50 a month it would have taken sometime to get up to \$350?

A. Oh, yes.

Q. And what time did you go to Mr. Wells again?

(Testimony of Junius Wright.)

A. Well, I presume that would be about the first of February.

Q. About the first of February, 1905?

A. About the first of February, 1905, yes, sir.

Q. That would be only a month after you had spoken to Governor Steunenberg?

A. No, I think the talk with Governor Steunenberg might have occurred in November or December, possibly December, possibly as late as January.

Q. That was the time it was \$100, at the time you talked with Governor Steunenberg?

A. Yes, sir, at the time Governor Steunenberg first talked with me it was about \$100.

Q. That is, at the time he guaranteed the payment of this account? A. Yes, sir.

Q. About \$100? A. Yes, sir.

Q. And it was about \$350 at the time you went to Mr. Wells?

A. Oh, it might have been—of course, Mr. Wells was in constant communication with me, explaining why he could not get his money.

Q. I mean at the time you went to Mr. Wells and had this long talk with him, his account had then gotten up to about \$350?

A. I presume so, I can't state the exact time, though.

Q. That is your best judgment?

A. Yes, sir.

Q. And his trade amounted to \$50 or \$60 a month?

A. Yes. Now, if I might be allowed to explain

(Testimony of Junius Wright.)

why I felt so sure about the payment of this account, it is perhaps irrelevant to this testimony, I could perhaps tell you why I did not care so much about it.

Q. I don't care about that. But you felt perfectly safe in regard to that account? A. Yes.

Q. You knew Governor Steunenberg would pay you?

A. You see it was like this: I knew Governor Steunenberg before he came to Idaho, and we were boys together in Colville, and, of course, I had known him away back in Iowa, forty years ago.

Q. Practically after Governor Steunenberg told you to let him have whatever he wanted, you did not feel unsafe?

A. No, I was a stockholder in this bank also—

Q. Just answer my question, please. After Governor Steunenberg guaranteed the bill would be paid you felt perfectly safe and allowed Wells to trade with you? A. Yes, sir.

Q. And you did not pay much attention to his account again, until you noticed it had gotten to be a considerable sum?

A. That is it, yes, sir.

Q. And when you found it had gotten up to \$350 you went to Mr. Wells again?

A. Yes, I wanted some money myself.

Q. Now, I am trying to find out when that was you went to Mr. Wells, if you can give the date.

A. Well, it was probably January, or perhaps the first of February.

(Testimony of Junius Wright.)

Q. Well, did you give him any more goods after that?

A. Oh, certainly, I let him trade with me up to the time Governor Steunenberg paid me, and then he stuck me for \$50, then I shut off on him, after Governor Steunenberg paid me.

Q. Well, his account had gotten up to \$448.50 at the time Governor Steunenberg paid you, which as you recollected was in April sometime?

A. Yes, sir, the first week in April.

Q. So it was probably about \$350 two months before that time? A. Yes.

Q. Well, now, did you go to Governor Steunenberg and ask him to pay this account for Mr. Wells, before you had a talk with Mr. Wells? A. No.

Q. Notwithstanding he guaranteed it—but you thought you would go to Mr. Wells first?

A. Yes, sir.

Q. And that is the time then you went to Mr. Wells, which you now say was sometime in January, 1905, and asked him for an explanation of the matter—an explanation in regard to the money that he claimed to be due him? A. Yes, sir.

Q. Now, can you give us that—give us your best recollection of the date of that talk?

A. No, sir, I cannot any further than I have given it to you already.

Q. And what do you say it is now?

A. Well, it was perhaps in January, 1905, it might have been earlier than that.

Q. And how long after Governor Steunenberg

(Testimony of Junius Wright.)

had guaranteed the account was it you had this long talk with Mr. Wells in which he detailed this timber transaction?

A. It was undoubtedly two months, and it might have been as long as three or four months after the Governor had first guaranteed his account, then Wells told me this story.

Q. Now, where was this talk with Mr. Wells?

A. It was in front of the Union Grocery Store, we were seated on the sidewalk.

Q. You were sitting on the edge of the sidewalk, you said?

A. Yes, sir, on the edge of the sidewalk with our feet on the pavement of the street.

Q. Now, did you request Mr. Wells to give you a statement of—

A. I did most emphatically.

Q. State what you said to Mr. Wells.

A. I think I said, "By God, John, I must know exactly the relationship you sustain with Governor Steunenberg and why he guaranteed your account, because if I should force Steunenberg to pay this account, I ought to know exactly why he agreed to act as guaranty for you"—

Q. Were you alarmed about your account at that time?

A. Well, I was alarmed, I had to collect—I was pressed a little, that was all.

Q. Had you become apprehensive that Governor Steunenberg would not pay you as he had agreed to?

A. Yes, sir.

Q. Why, you were entirely satisfied to give him

(Testimony of Junius Wright.)

credit when the Governor guaranteed the payment of his account—had anything occurred to change your opinion in regard to Governor Steunenberg's honesty? A. Yes, sir.

Q. What was it?

A. His refusal to pay some little claims which he was obligated in writing to pay.

Q. To you? A. No, not to me.

Q. To whom?

A. To the Capital City Bank, at Boise, Idaho.

Q. What kind of an obligation was that?

A. It was a note at hand, in the sum of \$900.

Q. Whose note was it?

A. I can't recollect now.

Q. Who told you about it?

A. Mr. Neal, the cashier of the bank.

Q. What did Mr. Neal tell you?

A. I asked him his opinion as to the reliability of Mr. Steunenberg paying his accounts.

Q. And you went and asked him that personally?

A. Yes.

Q. That was before he told you about the note?

A. Well, it was during this conversation that he told me about the note.

Q. And did you hear of any other notes he wouldn't pay? A. No, sir, this was the only one.

Q. And you had not heard of that until Neal told you? A. No.

Q. What did Mr. Neal tell you?

A. He told me they had a note of \$900 in the bank and that Governor Steunenberg was one of the

(Testimony of Junius Wright.)

makers, that he hadn't profited by the making of the note, that Mr. Steunenberg had often dunned himself, but that he had never paid it yet.

Q. Well, now, what suggested your going to Mr. Neal and asking him about Governor Steunenberg?

A. Because Mr. Neal was a personal friend of mine and he had been a partner with me in quite a number of interests in the country.

Q. Well, what suggested your inquiring about Governor Steunenberg?

A. Well, that is it; Mr. Neal was a partner of mine, as I say and I took him in my confidence in regard to this indebtedness.

Q. Had anything occurred which led you to believe that Governor Steunenberg's guaranty was not good?

A. Nothing except the largeness of the account had not been attended to.

Q. Did you ask Governor Steunenberg to pay that account at that time?

A. I don't think I did.

Q. Now, will you go on, Mr. Wright, and tell us just what you said in substance, as near as you can recollect it, and what Mr. Wells said, at the time you were sitting on the sidewalk in front of the Union Grocery Store, in reference to this timber deal, beginning at the very beginning of it, taking your time and give it to us in the form as near as you can, in which that conversation took place.

A. I said to Mr. Wells, "By God, John, I have got to know something about this deal with Steuney,

(Testimony of Junius Wright.)

and why Steunenberg had agreed to secure the payment of this account of yours, and what your relationship is with Steunenberg. And what it is that you are so sore about against these people from whom you claim that you have the money coming." "Well," he said, "Wright, I will tell you, I have money coming from these people, but in some way they don't seem to be willing to pay me."

Q. Who did he mean by "these people"?

A. Then I asked him, "What people do you refer to?" "Well," he said, "These people in the east that are putting up money for the payment of these timber claims." "Well," I says, "John, I have got to know all about this timber business so as to know where I am if I have got to force the payment of this account—of course, I have got to tell my attorneys something about why this account has been secured by Steunenberg, and I will have to rather force Steunenberg to show his hand in this timber deal, so I will have to know all about it without any exception, how you got mixed up in it." He replied then that previous to this, a man by the name of John Kinkaid—

Q. You are giving us now what Mr. Wells said?

A. Yes. "That previous to this time a man by the name of John Kinkaid conceived a plan of locating people on timber claims, and afterwards securing them for himself and holding them, and then selling them at an advanced price, as timber was advancing in price very fast, and that he had paid people in that country—

(Testimony of Junius Wright.)

Q. You say he had, who do you mean by "he"?

A. That Mr. Kinkaid had paid people in that country to go out and take up timber land and make final proof and sell it to him or to whomever he suggested, whereupon he would make them payments of \$400 for each and every claim, and needing more help, and Mr. Wells being of the same stripe, he had induced Mr. Wells to join with him in acting as a cruiser and locator, and in securing the different people to take out there to locate these claims. But that they had finally run out of money, the two of them.

Q. Mr. Wells and Mr. Kinkaid?

A. Yes, sir.

Q. Now, keep in mind you are telling us what Mr. Wells told you.

A. Yes, sir, Mr. Wells said they had run out of money, and that just about this time Governor Steunenberg came to them and he wanted to know if he could get in with them.

Q. About this time—you mean the time that Mr. Wells was talking to you?

A. No, no, about this time that he and Mr. Kinkaid ran out of funds.

Q. Oh, proceed.

A. Well, that Mr. Steunenberg came to them and wanted to join with them and Mr. Wells said he paid the two of them about \$11,000 to be let in on the ground floor then, to share share and share alike with them for claims they had already passed to final proof, as well as whatever claims they might secure

(Testimony of Junius Wright.)

in the future. Then Mr. Steunenberg had gone east and had made eastern connections, whereby he was in the possession of a large amount of money. Then I asked Mr. Wells who handled this end of the money, and he said he did.

Q. That is, Wells? A. Yes, sir.

Q. Proceed.

A. Well, I said to him, "How much did you use in buying these claims, you must have had lots of money." "Well," he said, "I had about \$248,000 that passed through my hands." Well, I thought he was a liar. So I asked him to be sure about it how he got this money. I asked him, "Did Steunenberg send you checks for this money, and did you cash the checks in this town?" He said, "No, I never had any check. When I wanted money I went to the First National Bank and they handed it to me without anything." I said, "Did our bank in Caldwell give you any money?" He said, "No, we never got a cent of money at Colville." I said, "Did Steunenberg ever hand you money himself?" He said, "Yes, sometimes, but" he said, "when I would not get it at the First National Bank they would tell me to wait a day or two, and I would get it." I said, "Where did this come from?" He said, "I don't know." "Did any of it pass through the banking and trust company at Caldwell?" He said, "No, I don't think they ever had anything to do with it at all." I then said, "Then what are you sore about over this matter?" "Well," he said, "I never got my percentage, my profits." He says,

(Testimony of Junius Wright.)

"I have got \$13,000 coming and I lost \$9,000 and I don't know what became of it." I said, "How did you lose \$9,000?" He said, "I don't know—you know I can't hardly write my name, I can't keep books and some of these fellows got cold feet, and they skipped the country after I had paid some of them \$400, before they got final proof." He said, "I have lost \$4,000 that way, but I don't care where the rest of it goes, I don't give a damn, I am going to have my \$13,000, or I will make these fellows sweat for it." And of course we had two or three hours' conversation there but I don't remember only the strongest points that came out. I could not give you the extended conversation, but that was the main features of the conversation.

Q. Well, did that satisfy you, was that what you were trying to find out? A. Oh, yes, sir.

Q. But you did not pay very much attention to it?

A. I did not care very much then, because I knew I had such a hold on Governor Steunenberg that when I wanted the money I would get it.

Q. And from that time on until you went to Governor Steunenberg, you did not pay very much attention to this account?

A. Oh, not very much. Every few days Mr. Wells would drop in and say he had not heard from anybody, and what he had done—I kept in communication with him.

Q. But from the time you had this talk which was some time in January, as near as you can fix

(Testimony of Junius Wright.)

it, and up to a couple of weeks prior to the time you were paid, when you had some appointment with A. K. Steunenbergh, had you had any conversation with Governor Steunenbergh?

A. Over the 'phone I had.

Q. What was that?

A. I called him up after one of his trips east and I told him that the account was too large for me to carry and I must have my money, and he gave me rather an abusive reply, and I said, "Governor, I have got to bring suit for this," and he said, "Well, you may sue and be darned." So he hung up the telephone and that ended it for that time.

Q. Was that before you had this appointment with his brother? A. Yes, sir.

Q. But you went down to see him?

A. Yes, sir, at Caldwell, about thirty miles from Boise.

Q. And at that conversation, you told A. K. Steunenbergh that you knew the entire history of this timber deal, and if the Governor didn't want to be shown up in the matter, he had better pay this bill?

A. I did not make any such threat.

Q. What did you say then?

A. I told him I knew the inside history of the entire deal in Idaho, the timber deal, and suggested that he ought to pay, but I made no threats at all.

Q. What was your object in referring to the inside history of the timber deal in Idaho?

A. Simply to let Frank Steunenbergh know that I knew why he had guaranteed the payment of this

(Testimony of Junius Wright.)

account.

Q. Why didn't you tell Frank Steunenbergs that?

A. He was not there.

Q. Why didn't you tell him that at the time you phoned him?

A. Because he hung up too quick.

Q. You never tried to see him after that?

A. No, I didn't care about it.

Q. Now, Mr. Wright, after Mr. Wells had told you about this, what hold did you think you had on Governor Steunenbergs?

A. Well, I had several of them. In the first place, he was trading with this bank in which I was largely interested, his brother Al and I were quite intimate friends—in fact I was an intimate friend of the Governor, notwithstanding he was Governor, it was always Frank and June when we were alone, but when in company, through respect, I called him Governor, and the thing, more than any other one thing, was the fact that we were associated in business together in this bank—

Q. Well, you don't answer my question. How about this timber deal—you said after Mr. Wells had detailed the timber deal to you, you felt you had such a hold on the Governor that you didn't care anything more about the matter. Now, what about the timber deal?

A. Well, I knew when Frank Steunenbergs knew that I knew the inside history of this timber deal in Idaho there would be no question about this account being paid—he would pay the money.

(Testimony of Junius Wright.)

Q. And he had already been told that you did know about it? A. Yes, sir.

Q. And you got your money?

A. Yes, sir.

Q. And you think he paid you because of the fact he knew that you knew about the timber deal?

A. I rather inferred so, although he claimed he paid me because he was morally obligated to do so.

Q. Now, what was there about this timber deal that made you think Governor Steunenberg would pay you?

A. Well, it was an open, notorious fact all through Idaho that these timber deals were crooked; it was discussed every day privately and upon the streets and in the offices and many were saying that Frank Steunenberg would soon get himself in the penitentiary if he was not very careful.

Q. And you believed that?

A. Yes, sir, and I believe it now, that he would have gone to the penitentiary if he had not been killed.

Q. And you believed then and you believe now that this timber was being entered through violation of law?

A. Yes, sir, I knew some of the people that were entering it.

Q. Well, you thought so then?

A. Yes, sir.

Q. And you think so now?

A. Yes, sir.

Q. And you went before the Grand Jury?

(Testimony of Junius Wright.)

A. I was summoned before the Grand Jury.

Q. And you told them all about how you had collected your claim?

A. I had nothing to do with the Grand Jury.

Q. Well, you told them the story all about how you had collected this claim?

A. I told them just what Mr. Wells had told me.

Q. And you told them how you had used this information you got from Wells, and how Steunenberg had paid you?

A. Well, I told them the result was he did pay me, I did not tell them that I used this information I got from Wells as a club.

Q. Well, you told them that you told Steunenberg you knew all about this timber deal, and that then he paid you?

A. Yes, sir.

Q. And it has always been your idea, Mr. Wright, and is now, is it not, that you were able to collect your bill simply because you knew of the timber deal, which you thought was crooked, and that Mr. Steunenberg was interested in it?

A. Why, I think that was the main reason.

Q. Have you now told us all the talk you had with Mr. Wells concerning this timber deal?

A. I have not told you one-tenth of it.

Q. Go on and finish it.

A. I don't remember all of it. I have told you all I remember.

Q. Did he tell you when all of this began?

A. Yes, sir.

Q. When did he tell you it began?

(Testimony of Junius Wright.)

A. I could not tell when, only when Kinkaid was a member of the legislature, I presume in the second—well, the session covering a part of the year of 1900.

Q. 1900 and 1901?

A. Well, it was '99, or 1900 or 1901, I don't know which, I never cared enough about the matter to look to see when the legislature did convene.

Q. Did he tell you when he, Wells, got into the deal?

A. Yes, sir.

Q. When, did he say?

A. Just a few months after Kinkaid; he was taken into the business by Kinkaid.

Q. Well, did he tell you the Barber Lumber Company was interested?

A. Not until after Governor Steunenberg was interested, for some months, and then Governor Steunenberg connected with the eastern people.

Q. Well, this \$248,000 that Wells handled, that was furnished by the Barber Lumber Company?

A. Yes, sir, that was furnished by the Barber Lumber Company.

Q. Did Mr. Wells tell you so?

A. Wells told me that.

Q. And the money that was put into the business first was the money of Wells and Kinkaid?

A. Wells, Kinkaid and Steunenberg's money.

Q. Was Steunenberg in it at first?

A. Well, after.

Q. I am speaking about the first?

A. The first money put into it was the private

(Testimony of Junius Wright.)

money of John R. Kinkaid.

Q. John R. Kinkaid put the first money into it?

A. Yes, sir.

Q. How much money did he put into it?

A. I don't know.

Q. Then Wells went in with Kinkaid?

A. Wells went in with Kinkaid after.

Q. And did he put any money in the proposition?

A. Well, I presume he did.

Q. Well, did he tell you he did—that is what I am asking you?

A. No, I won't say that he did tell me he did, but he said he put in his time.

Q. Then he told you they got Steunenberg in?

A. He said Steunenberg voluntarily came in.

Q. And did he tell you that Steunenberg put in some money? A. Why, certainly.

Q. Did he tell you how much Steunenberg put in?

A. Well, if I remember rightly, he said he paid them \$11,000.

Q. Paid Wells and Kinkaid \$11,000?

A. Paid Wells and Kinkaid \$11,000.

Q. Did he tell you he paid any more than that?

A. Yes, sir, that Governor Steunenberg had advanced quite a lot of money, kept on advancing money until he became embarrassed for lack of funds.

Q. What were they using this money for, did he tell you? A. Yes, sir.

Q. What for?

(Testimony of Junius Wright.)

A. To buy these claims, to make this \$400 payment, and for other expense money, going out to locate them, and for the papers that were necessary.

Q. Well, the \$400, they were buying the claims with that?

A. Yes, sir, they were paying, in addition to the expenses, \$400 for each entry—to each entryman.

Q. So that the entryman would get his claim, Wells told you, and when he had his final receipt he would sell it to them for \$400 in excess of the Government price, what he had to pay the Government?

A. Yes, sir.

Q. Now, did he tell you what the other expenses were? A. No, he did not.

Q. Well, did you know what the expenses were for acquiring a timber claim? A. No.

Q. Do you know what they had to pay the Government? A. No.

Q. But what Wells told you was that they had to pay the entrymen for these claims \$400, over and above what it would cost the entrymen to get it?

A. Yes, sir, the entryman had a net profit of \$400, that is the way it was.

Q. And this money of Kinkaid's and Governor Steunenberg had been used for buying claims from entrymen on that basis? A. Yes, sir.

Q. Well, did you think it was against the law for anybody to buy claims from entrymen?

A. Yes, sir, in the manner in which these entries were made.